166.

SUPREME COURT OF THE UNITED STATES.

No. 38.

OLIVER O'HARA & AL., APPELLANTS,

vs.

THE UNITED STATES.

ON APPEAL FROM THE SUPERIOR COURT OF EAST FLORIDA.

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Langtree and O'Sullivan, Print.

Before the Honorable Robert Raymond Reid, Judge of the superior court for the District of East Florida, and specially authorized by law to receive and adjudicate claims and titles to land in the District of East Florida.

Be it remembered, That on the fourth day of May, in the year of our Lord one thousand eight hundred and twenty-nine, Oliver O'Hara, for himself and for the other heirs of Daniel O'Hara, deceased, by his attorney, brought and filed in the clerk's office of the superior court for the Eastern District of Florida, his petition or claim to certain land therein mentioned; which said petition or claim is in the words and figures following, to wit:

Petition to the Court.

TERRITORY OF FLORIDA, *Superior Court, Eastern District, to wit:*

To the Honorable Joseph L. Smith, Judge of said court, in chancery sitting.

The petition of Oliver O'Hara, for himself and for the other heirs of Daniel O'Hara, deceased, respectfully sheweth:

That his deceased father, Don Daniel O'Hara, then a subject of His Catholic Majesty, did, on the third September, 1803, present his memorial to Henry White, then Governor of East Florida, praying for fifteen thousand acres of land on the river Nassau, and if there should not be a sufficiency there to complete the quantity of acres necessary for three hundred negroes, to him belonging, that then the residue shall be given to him on the river St. Marys, which said petition of the said O'Hara was fully granted and conceded by the said Governor, on the fifth day of the said month, as will more fully appear by reference to the certificate of John de Piena, the Secretary of the Government, which is hereto annexed and made an exhibit A. in this petition, the original of which said certificate is to be found in the office of the public archives of this city.

Your petitioner further represents, That in pursuance of the provisions of the said decree of the said Governor White, he, the grantee, proceeded to take possession of the said tract of land within the space of six months, as directed in the said decree, and to build a house thereon, and make other improvements upon the same. Your petitioner further represents that the said Daniel O'Hara obtained leave from the governor of this province, to proceed to the Island of Jamaica, in the West Indies, there to procure from one hundred to one hundred and fifty negroes, the property of the said O'Hara, with a view to complete the settlement of the lands so as above granted, which said negroes were by the said O'Hara shipped from the Island

of Jamaica, and when off the Bar of Savannah were captured and seized by a French privateer, thus preventing the said O'Hara from perfecting the settlement of the said lands.

Your petitioner further represents to your Honor, that although his ancestor, Daniel O'Hara, under whom he claims, was often absent from this Province, such absence was always by leave of the governor thereof, and with a view and intention of procuring the necessary slaves to cultivate the lands now claimed, and that he, the said Daniel O'Hara, never ceased to be a Spanish subject, and to be so considered by the successive governors of this province, all of which will more fully appear by exhibits marked B. C. D. E. F. and G, and attached to this petition.

Your petitioner further represents, That he continued to make every exertion to cultivate the said lands, and, from the year 1803 to the year 1819, expended large sums of money to the amount of more than three thousand dollars to effect this object. On the third September, 1818, the said Daniel O'Hara again presented his petition to Josè Coppinger, then the Governor of East Florida, praying that a renewed copy of the original grant of 1803 should be given to him, the said O'Hara, from the proper officers of government, all of which was directed to be done by the said Governor Coppinger, as will appear by exhibit D. hereto annexed.

Your petitioner further represents, that on the fourth day of March, George I. F. Clarke, then surveyor general of this province of East Florida, in pursuance of the decree of the governor, as will be seen by reference to the certificate of the said surveyor general, measured and surveyed the said tract of fifteen thousand acres on the waters of the river Nassau, embracing two places known as Alligator and Mills swamp—the first line of this survey begins at one pine and runs to another, N. 20° E., 328 c.—the second line commences at the termination of the first, and runs north 70° degrees west, 457½ c., to another pine—the third line runs thence south 20 *degrees* W., 328 chains to a pine—and the fourth line runs south 70 degrees east, 457½ chains to the beginning, as will appear by reference to exhibit E. hereto annexed, and prayed to be taken as a part of this petition.

Your petitioner further shews, that immediately after the permission of Governor Coppinger to give to the said Daniel O'Hara a renewed copy of the grant of 1803, as above referred to, in exhibit D., he, the said Daniel O'Hara, still with a view of settling the said tract of fifteen thousand acres of land, introduced a number of negroes into this province, which said negroes, whilst on board the vessel in which they were imported, to wit: the British schooner Spring Bird, Captain Robertson, then lying in the waters of the St. Johns river, to wit: in the year 1819, were forcibly seized and taken possession of by Lieut. Griffith of the United States Army, acting under the orders of Major Payne, then commanding the troops of the United States stationed at Amelia Island, the King of Spain, to whom the province East of Florida then belonged, being then at peace with the United States of America, and the said slaves having been legally imported

and regularly entered at the custom house, in the city of St. Augustine, by William Travers, agent of the said O'Hara.

Your petitioner further shews, that from these causes above enumerated, and for the further reasons of the constantly unsettled state of that part of the country, arising as well from the dangers to be apprehended from the Indians as from the rebellion and revolution under which it labored until the province was taken possession of by the United States, which said rebellion and revolution, if not caused by the American Government, was fostered and prolonged by their troops. He, the said D. O'Hara, has never been able, with safety and effect, to complete the settlement upon the lands now claimed by your petitioner for himself and the other heirs of the said O'Hara.

Your petitioner further states, that the aforesaid claim has been filed before the board of commissioners appointed to ascertain claims and titles to lands in East Florida, and as he is informed the said claim has not been recommended to Congress for confirmation, but the same has not been reported by said board or the register and receiver acting as such, forged or antedated, nor has the same been annulled by the treaty with Spain, or by the decree ratifying the same, or finally acted on by any of the said boards, and that said land is within this judicial district; but your petitioner believes that the grant aforesaid is good and valid, and invests him and those for whom he claims under the said Daniel O'Hara, deceased, with the right to a fee simple estate in the lands granted as above, and that by the usages, laws, customs, and ordinances of the King of Spain, your petitioner, and those for whom he claims are entitled to a fee simple estate as aforesaid; and that by the treaty between Spain and the United States of the twenty-second February, 1819, the United States are bound to recognize and confirm the aforesaid title. Without this claim, the United States, as far as your petitioner knows, are the rightful claimants to the said lands.

Your petitioner, therefore, for himself and for the other representatives of the said Daniel O'Hara, deceased, in consideration of the premises, prays that this honorable court will take cognizance of this, his petition, and that a copy hereof, and a citation to shew cause &c., may be served on Thomas Douglas, Esq., United States District Attorney for this district, pursuant to the provisions of the statutes in such cases made and provided, and finally that your honor will decree to your petitioner a confirmation of the title to the land in this petition claimed, and such other and further relief as in equity, &c., and your petitioner as in duty, &c.

C. DOWNING,
Attorney for Claimants.

A copy of the foregoing petition, with a citation thereto annexed, was delivered to the marshal of this district, to serve on the Attorney of the United States for the same district; and the return of the said Marshal thereon is in the words and figures following, to wit:

"Served copy on Thomas Douglas, Esquire, 18th May, 1829."

"WATERS SMITH, *Marshal.*"

And afterwards, to wit: on the first day of August, in the year of our Lord one thousand eight hundred and twenty-nine, Thomas Douglas, Esquire, United States Attorney for the district of East Florida, brought and filed in the clerk's office aforesaid, his answer to the said petition; which said answer is in the words and figures following, to wit:

Answer of United States Attorney.

DIST. OF EAST FLORIDA, *Superior Court, November term,* 1829.

THE UNITED STATES OF AMERICA,
ats.
OLIVER O'HARA, &c., &c.

The answer of Thomas Douglas, United States Attorney for the district of East Florida, to the petition or bill of complaint of Oliver O'Hara, who claims title to the lands in said petition or bill of complaint mentioned, for himself, and for the heirs of Daniel O'Hara, deceased.

The said attorney, in the name, and for and on behalf of the said United States, saving and reserving to them, now and at all times hereafter, all and all manner of benefit of exception to the manifold errors, defects, and irregularities in the said petition or bill of complaint contained for answer thereunto, or unto so much thereof as it is material and necessary for them to answer unto, answereth and saith: That he has no knowledge of any such grant or concession having been made by the said Governor White, to the said Daniel O'Hara, on the fifth day of September, in the year 1803, [or at any other time] for fifteen thousand acres of land, as is in the said petition or bill of complaint mentioned, set forth, and described; nor of the said Daniel O'Hara's having taken possession of said land within the space of six months from the date of the said supposed grant or concession, or of his, the said Daniel O'Hara's, having built a house and made other improvements on the said tract of land, or of the said Daniel O'Hara's having obtained leave from the governor of this province to proceed to the Island of Jamaica, in the West Indies, to procure from one hundred to one hundred and fifty negroes, with a view to complete the settlement of the said lands, or of the said Daniel O'Hara's having had any such negroes at said Island of Jamaica, or elsewhere, or of his having shipped any such negroes, or of his having been prevented by the capture and seizure of the said negroes, by a French privateer, off the Bar of Savannah, from perfecting the settlement of said land; or of the said Daniel O'Hara's having, with a view to the said tract, of introducing a number of negroes into the said province, which said negroes, whilst on board the vessel in which they were imported, were forcibly seized and taken possession of by Lieut. Griffith, of the United States Army, as the said O'Hara, in his petition or bill of complaint aforesaid, hath

alleged and set forth; nor has he any knowledge of the making and execution of the renewal of the said supposed original grant or concession of the said lands by the said Governor Coppinger, to the said Daniel O'Hara, on the third day of September, in the year 1818, as is in the said petition or bill of complaint alleged, or of the making of the survey of the said tract of land in manner and form, as in the said petition or bill of complaint mentioned and described, or whether the said Daniel O'Hara was a Spanish subject, or was ever recognized as such by the Spanish authorities of this province, as he, the said Oliver O'Hara, has, in his said petition or bill of complaint alleged, this respondent has no knowledge except what he has derived from a perusal of the said petition or bill of complaint, and cannot, therefore, either admit or deny the same, but respectfully prays this honorable court to require of the said Oliver O'Hara, upon the hearing of this cause, due proof of the making and execution of the said supposed grant or concession by the said Governor White, and of the making and execution of the said renewal of the said supposed original grant or concession by the said Governor Coppinger, and of the making of the said survey [if any such grant or concession was ever made and renewed, or if any such survey was made, as are in said petition or bill of complaint alleged] and of all the matters and things in said petition or bill of complaint alleged and set forth, as they are therein stated, according to law, and the usages of courts of equity.

And this respondent avers, that if any such grant or concession was made by the said Governor White at the time and in the manner and form as is in the said petition or bill of complaint alleged and set forth, or if any such renewal of the said supposed original grant or concession was made by the said Governor Coppinger to the said Daniel O'Hara, as is in the said petition or bill of complaint alleged and described, which is by no means admitted, the said grant or concession was made by the said Governor White, and renewed by the said Governor Coppinger, contrary to, and in violation of, the laws, ordinances and royal regulations of the Government of Spain, which were in force in the said province of East Florida at the time when the said supposed original grant or concession is said to have been made by Governor White, and also at the time when the said supposed renewal thereof is alleged to have been made by the said Governor Coppinger as aforesaid, providing for the granting of lands in its provinces, of which said provinces East Florida was one at the times when the said supposed grant or concession and renewal are alleged to have been made respectively, and without any power or authority on the part of the said Governor White to make the said supposed grant or concession, or on the part of the said Governor Coppinger to renew or to confirm it; and that if such grant or concession was made or renewed in manner and form as is in the said petition or bill of complaint alleged, neither the making or the said original grant or concession, or the renewal of the same by Governor Coppinger as aforesaid, were ever approved by the said Government

of Spain; and that they were and are wholly null and void; all of which will more fully appear by reference to the laws, ordinances and royal regulations aforesaid, which this respondent prays leave to introduce and read on the hearing of this cause. And this respondent further saith, that no power had been conferred by the said Government of Spain upon the said Governor White, at the time when the said supposed original grant is alleged to have been made as aforesaid, to make grants of land in East Florida of the magnitude and description of the one now claimed and described by the said Oliver O'Hara in this suit; nor had any power been conferred by the *the* said Government of Spain upon the said Governor Coppinger at the time when the said renewal or confirmation thereof is alleged to have been made, to make, renew, or confirm such grants. And this respondent further prays, that the said Oliver O'Hara may be required to show and prove, upon the hearing of this cause, the specific powers which had been conferred by the said Government of Spain [if any powers had then been conferred] upon the said Governor White, at the time when the said supposed grant or concession is alleged to have been made as aforesaid, to make grants of land in East Florida; and particularly, that they may be required to show and prove the specific powers under which he claimed to act in making the said supposed grant or concession, if any such was made by him; and also, that he may be required to show and prove the specific powers which had been conferred [if any power had been conferred] by the said Government of Spain upon the said Governor Coppinger, at the time when the said supposed renewal of the said supposed original grant is alleged to have been made, to make, renew, or confirm grants of land in East Florida; and particularly, that he may be required to shew and prove the specific powers under which he claimed to act in making the said supposed renewal of the said supposed original grant, if any such renewal was ever made by the said Governor Coppinger.

And this respondent further saith, that if any such grant or concession of the said lands was ever made by the said Governor White to the said Daniel O'Hara, and if the said Governor White had been invested by his Government with competent power and authority to make the same, and if it was renewed by Governor Coppinger in manner and form aforesaid, and the said Governor Coppinger had been invested with competent power and authority to renew and confirm it, [which is denied,] the said grant or concession, even when renewed as aforesaid, gave to the said Daniel O'Hara no right of soil in the said lands whatever, nor any other right thereto except to take possession and settle himself upon the said land, until the time when, in conformity to the number of workers whom the said Daniel O'Hara might then have had to cultivate the same, the corresponding number of acres should be surveyed to him; and this respondent avers, that neither the said Daniel O'Hara, *n*or the said petitioner, *n*or those for whom the said petitioner claims title to the said tract of land, ever had any workers to cultivate the said tract of

land, and that they, nor either of them, were therefore ever entitled to have the same or any part thereof surveyed to him or them.

And this respondent admits, that the aforesaid claim has been filed before the board of commissioners appointed to ascertain claims and titles to land in East Florida; and that the said board of commissioners did not recommend the same for confirmation, but, on the contrary, reported against it; but this respondent denies, that the said grant or concession is good and valid, or that the said Daniel O'Hara, deceased, was by the terms of the said grant or concession invested with a fee simple estate in the said tract of land, or that the said petitioner, or those for whom he claims under the said Daniel O'Hara, deceased, are entitled to a fee simple or any other estate in the said lands so pretended to have been granted, conceded, *renewed* or confirmed as aforesaid, or that any part or parcel thereof, by any law, custom, usage, or ordinance of the King of Spain aforesaid, or that the said United States are bound by the said treaty between Spain and the said United States of the twenty-second of February, 1819, or in any other way or manner to recognize or confirm the aforesaid claim.

And this respondent also denies, that the said Daniel O'Hara, by any of the causes in the aforesaid petition or bill of complaint alleged, was rendered unable with safety to effect and complete the settlement upon the said tract of land now claimed by the said petitioner for himself, and the heirs of Daniel O'Hara, deceased; and this respondent farther saith, that if any difficulty at any time arose from the unsettled state of that part of the country, or from the dangers to have been apprehended from the Indians, or from the rebellion and revolution in said petition or bill of complaint mentioned, it could only have been of very short continuance, whereas, more than twenty-five years have elapsed, as appears by the shewing of the said Oliver O'Hara himself, since the time when the said supposed grant or concession is alleged to have been made as aforesaid, during all which period this respondent avers, that the said Daniel O'Hara, and the said petitioner, and those for whom he claims title to the said tract of land, have entirely failed and neglected to make the said settlement on the tract of land aforesaid, and wholly abandoned the same, and that they and each of them have thereby wholly forfeited and lost all right and title [if any they or either of them ever had] to the said tract of land and every part and parcel thereof.

And this respondent farther saith, that if any such renewal of the said supposed grant or concession of 1803 was made or given by the said Governor Coppinger, on the third day of September, in the year 1818, to the said Daniel O'Hara, as is in the said petition or bill of complaint mentioned, it was equivalent to, and in substance and effect was to all intents and purposes, a new grant or concession of the said lands; and that the said renewal of the said original grant or concession of the said tract of land was and is rendered wholly null and void by the provisions contained in the latter clause of the

of Spain; and that they were and are wholly null and void; all of which will more fully appear by reference to the laws, ordinances and royal regulations aforesaid, which this respondent prays leave to introduce and read on the hearing of this cause. And this respondent further saith, that no power had been conferred by the said Government of Spain upon the said Governor White, at the time when the said supposed original grant is alleged to have been made as aforesaid, to make grants of land in East Florida of the magnitude and description of the one now claimed and described by the said Oliver O'Hara in this suit; nor had any power been conferred by the *the* said Government of Spain upon the said Governor Coppinger at the time when the said renewal or confirmation thereof is alleged to have been made, to make, renew, or confirm such grants. And this respondent further prays, that the said Oliver O'Hara may be required to show and prove, upon the hearing of this cause, the specific powers which had been conferred by the said Government of Spain [if any powers had then been conferred] upon the said Governor White, at the time when the said supposed grant or concession is alleged to have been made as aforesaid, to make grants of land in East Florida; and particularly, that they may be required to show and prove the specific powers under which he claimed to act in making the said supposed grant or concession, if any such was made by him; and also, that he may be required to show and prove the specific powers which had been conferred [if any power had been conferred] by the said Government of Spain upon the said Governor Coppinger, at the time when the said supposed renewal of the said supposed original grant is alleged to have been made, to make, renew, or confirm grants of land in East Florida; and particularly, that he may be required to shew and prove the specific powers under which he claimed to act in making the said supposed renewal of the said supposed original grant, if any such renewal was ever made by the said Governor Coppinger.

And this respondent further saith, that if any such grant or concession of the said lands was ever made by the said Governor White to the said Daniel O'Hara, and if the said Governor White had been invested by his Government with competent power and authority to make the same, and if it was renewed by Governor Coppinger in manner and form aforesaid, and the said Governor Coppinger had been invested with competent power and authority to renew and confirm it, [which is denied,] the said grant or concession, even when renewed as aforesaid, gave to the said Daniel O'Hara no right of soil in the said lands whatever, nor any other right thereto except to take possession and settle himself upon the said land, until the time when, in conformity to the number of workers whom the said Daniel O'Hara might then have had to cultivate the same, the corresponding number of acres should be surveyed to him; and this respondent avers, that neither the said Daniel O'Hara, nor the said petitioner, nor those for whom the said petitioner claims title to the said tract of land, ever had any workers to cultivate the said tract of

land, and that they, nor either of them, were therefore ever entitled to have the same or any part thereof surveyed to him or them.

And this respondent admits, that the aforesaid claim has been filed before the board of commissioners appointed to ascertain claims and titles to land in East Florida; and that the said board of commissioners did not recommend the same for confirmation, but, on the contrary, reported against it; but this respondent denies, that the said grant or concession is good and valid, or that the said Daniel O'Hara, deceased, was by the terms of the said grant or concession invested with a fee simple estate in the said tract of land, or that the said petitioner, or those for whom he claims under the said Daniel O'Hara, deceased, are entitled to a fee simple or any other estate in the said lands so pretended to have been granted, conceded, *renewed* or confirmed as aforesaid, or that any part or parcel thereof, by any law, custom, usage, or ordinance of the King of Spain aforesaid, or that the said United States are bound by the said treaty between Spain and the said United States of the twenty-second of February, 1819, or in any other way or manner to recognize or confirm the aforesaid claim.

And this respondent also denies, that the said Daniel O'Hara, by any of the causes in the aforesaid petition or bill of complaint alleged, was rendered unable with safety to effect and complete the settlement upon the said tract of land now claimed by the said petitioner for himself, and the heirs of Daniel O'Hara, deceased; and this respondent farther saith, that if any difficulty at any time arose from the unsettled state of that part of the country, or from the dangers to have been apprehended from the Indians, or from the rebellion and revolution in said petition or bill of complaint mentioned, it could only have been of very short continuance, whereas, more than twenty-five years have elapsed, as appears by the shewing of the said Oliver O'Hara himself, since the time when the said supposed grant or concession is alleged to have been made as aforesaid, during all which period this respondent avers, that the said Daniel O'Hara, and the said petitioner, and those for whom he claims title to the said tract of land, have entirely failed and neglected to make the said settlement on the tract of land aforesaid, and wholly abandoned the same, and that they and each of them have thereby wholly forfeited and lost all right and title [if any they or either of them ever had] to the said tract of land and every part and parcel thereof.

And this respondent farther saith, that if any such renewal of the said supposed grant or concession of 1803 was made or given by the said Governor Coppinger, on the third day of September, in the year 1818, to the said Daniel O'Hara, as is in the said petition or bill of complaint mentioned, it was equivalent to, and in substance and effect was to all intents and purposes, a new grant or concession of the said lands; and that the said renewal of the said original grant or concession of the said tract of land was and is rendered wholly null and void by the provisions contained in the latter clause of the

eighth article of the same treaty, which is in the said petition or bill of complaint mentioned; and that therefore this honorable court cannot take cognizance of, or exercise any jurisdiction in, this case as against the same United States.

And this respondent farther saith, that at the time when the said supposed grant or concession is alleged to have been made as aforesaid, and also at the time when the said renewal thereof is alleged to have been made as aforesaid, it was, and for a long space of time had been the fixed and settled policy of the Government of Spain to parcel out its colonial domain with reference solely to the object of increasing the population of its provinces, and of benefiting its indigent subjects, and that, according to that policy, grants of land for the purpose of speculation were never approved or tolerated by the said Government; and that the said supposed grant or concession, and the said renewal thereof, above mentioned, were obtained [if they or either of them were obtained at all] for the purpose of speculation only.

And this respondent admits, that the said Oliver O'Hara filed his claim to said tract of land before the Board of Commissioners in his said petition or bill of complaint mentioned; and that the register of the land office, and the receiver of public monies for the district of East Florida, acting as such Board of Commissioners, rejected the same, as will more fully appear by reference to No. 5 of the report No. 3 of the said register and receiver, page 89 of their report for the year 1828, a copy of which is annexed as exhibit A, and made a part of this answer.

And now, having fully answered all the matters and things in the said petition or bill of complaint contained and alleged, this respondent prays, that the said United States may be hereof discharged, and their reasonable costs and charges by them in and about the defence of this suit, paid, laid out and expended, may be adjudged and decreed to them, &c.

THOMAS DOUGLAS,
U. S. Att'y.

Exhibit A, to said answer.

EXHIBIT A, annexed to said answer.

No. 5. Daniel O'Hara, claimant. 15,000 acres of land.

Tomas de Aguilar, Secretary of Government, certifies that Daniel O'Hara presented a memorial, dated September third, 1803, soliciting 15,000 acres of land [vacant] situated at a place called Nassau, between the rivers St. Johns and St. Marys, when the survey takes place; Governor White passes the memorial to the commandant of engineers for his report, agreeably to which, Governor White made the following decree, dated the fifth of the same month and year: Let there be granted to this interested the land which he solicits

without injury to a third person, and until, according to the number of workers he may have for its cultivation, there shall be measured what he is entitled to; it being well understood, that he cannot claim damages for injuries in case that, from fear of an invasion or other motives of the royal service, he be ordered to retire into the interior of the province, and that he must take possession of the said land in the space of six months from the date. This, if genuine, of which we are not satisfied, is a mere grant for head rights, and is a bare declaration, that when he proved the number of his family he should have surveyed to him as many acres as by the regulations he was entitled to. It does not appear that he proceeded to perfect his title, or to ascertain the number of acres, or to cultivate and possess it. Rejected.

And afterwards, to wit: on the thirteenth day of June, in the year of our Lord one thousand eight hundred and thirty-four, Oliver O'Hara, by his said attorney, brought and filed in the clerk's office aforesaid, his replication, which is in the words and figures following, to wit:

Replication.

SUPERIOR COURT *for the Eastern District of Florida.*

June Term, 1834.

OLIVER O'HARA, and others, *Plaintiffs*,
vs.
THE UNITED STATES, *Defendants.*
} In Chancery.

The replication of the said plaintiffs to the answer of Thomas Douglas, district attorney, on behalf of the United States, defendants.

These replicants saving and reserving to themselves all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereunto, say, that they will and do aver, maintain, and prove their said bill to be true, certain, and sufficient in the law to be replied unto by the said defendants, and that the answer of said defendants is uncertain, evasive, and insufficient in law to be replied to by these replicants, without that, that any other matter or thing in the said answer contained material or effectual to be replied to, and herein and hereby not sufficiently replied to, confessed or avoided, traversed or denied, is true, all which things and matters, these replicants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

C. DOWNING,
Solicitor for plaintiffs.

And afterwards before the superior court for the district of East Florida, holden at the court house in the city of St. Augustine, at the term of July, in the year of our Lord one thousand eight hundred and thirty-four, to which term this cause had come by regular continuance, to wit: on Friday the eighteenth day of said term, and the fifteenth day of the month of August, the following entry of record was made in this cause, to wit:

Hearing of Cause.

OLIVER O'HARA, for himself and for the other heirs of Daniel O'Hara, deceased, *against* THE UNITED STATES OF AMERICA.	Land claim, 15,000 acres.

This day came as well the counsel for the said claimants, as the counsel for the United States, and this cause came on to be heard this day, and the petition of said claimants and the answer of the attorney of the United States with the exhibit thereto, together with the replication of the said claimant, were read to the court; the counsel for the claimants offered and read in evidence a certified copy by the keeper of the public archives, of the original memorial and grant in this cause, together with a certified translation of the same. The counsel for the said claimants then offered in evidence the depositions of Francis P. Fatio, Thomas Murphy, George I. F. Clarke, Francis Marien, William Travers, Richard Weightman, and Charles Robion, taken in this case, together with certain letters referred to in said depositions, and numbered from one to seven inclusive, to the receiving the said depositions and letters in evidence, the counsel for the United States objected, alleging that the same are irrelevant and immaterial, which objection was overruled by the court, and the said depositions and letters were admitted in evidence, but subject to the opinion of the court as to their admissibility on hearing the argument in this cause. The counsel for the claimants then offered in evidence an original document containing permission of Governor White to Daniel O'Hara, to return to the port of Charleston, dated 5th September, 1803, together with a certified translation thereof. The counsel for the said claimants then offered in evidence a certified copy of the record and proceedings of the district court of the district of Georgia in an admiralty case between Daniel O'Hara and the brigantine Chance and cargo, to the receiving of which in evidence the counsel for the United States objected, alleging that the same is irrelevant and immaterial, which objection was overruled by the court, and the said document admitted in evidence, but subject to the opinion of the court as to its admissibility on hearing the argument in this cause. The counsel for the said claimants then offered in evidence a document purporting to be an original certified copy by Juan de Pierra, then secretary of the Spanish government of this province, of the grant in this case, dated 5th September, 1803, together with a translation thereof, and is referred

to in the petition of the said claimants as exhibit A, to the receiving of which document in evidence the counsel for the United States objected, and the objection was overruled by the court, and the said document admitted in evidence, but subject to the opinion of the court as to its admissibility on hearing the argument in this cause. The counsel for the said claimants then offered in evidence the deposition of Joseph Swain, taken before George Reid, Esquire, justice of the quorum, and notary public at Charleston, on the 25th May, 1804, and certified under his notarial seal.

And the claimants' counsel, not being at this time prepared to proceed further in the hearing of this cause, the further hearing thereof was postponed till to-morrow morning at 10 o'clock.

And afterwards at the same term of July, in the year of our Lord one thousand eight hundred and thirty-four, to wit: on Saturday the nineteenth day of said term, and the sixteenth day of the month of August, the following entry of record was made in this cause, to wit:

Hearing continued.

OLIVER O'HARA, for himself and for the other heirs of Daniel O'Hara, deceased, *against* THE UNITED STATES OF AMERICA.	Land claim, 15,000 acres.

This day came as well the counsel for the said claimants, as the counsel for the United States, and the court proceeded in the further hearing of this cause. The counsel for the claimants offered in evidence a certified copy by the keeper of the public archives, of the petition of Daniel O'Hara, dated 2nd September, 1818, to Governor Coppinger, for a new copy of the memorial of the said O'Hara, and the decree of Governor White thereon in 1803, and referred to in the claimants' petition as exhibit D, to the receiving of which document in evidence the counsel for the United States objected, because the same bears after the 24th of January, 1818, which objection was overruled by the court, and the said document admitted in evidence, but subject to the opinion of the court as to its admissibility on hearing the argument in this cause. The counsel for the said claimants then offered in evidence a plat and certificate of survey of the land claimed in this case, dated 4th March, 1819, and referred to in the claimants' petition as exhibit E, to the receiving of which in evidence the counsel for the United States objected, because the same bears date after the 24th of January, 1818, which objection was overruled by the court, and the said document admitted in evidence, but subject to the opinion of the court as to its admissibility on hearing the argument in this cause. The counsel for the said claimants then offered in evidence the permission of Governor White to Daniel O'Hara, to introduce into the port of St. Augustine a brig from the United States, and to convey on board of her his property, dated 3rd September, 1803, and re-

ferred to in the claimants' petition as exhibit F, to the receiving of which document in evidence the counsel for the United States objected, alleging that the same is irrelevant and immaterial, which objection was overruled by the court, and the said document admitted in evidence, but subject to the opinion of the court as to its admissibility on hearing the argument in this cause. And on motion of the claimants' counsel, leave is given him to introduce further evidence. The counsel for the United States offered in evidence the petition of Daniel O'Hara to Governor Coppinger for an order of survey, dated 20th April, 1819. The counsel for the said United States also offered in evidence the deposition of Antonio Alvarez, as taken in this case, to the receiving of which in evidence the counsel for the claimants objected, alleging that the same is wholly irrelevant and immaterial, except that portion of it which relates to the age of the said Alvarez, which objection was overruled by the court, and the said deposition admitted in evidence, but subject to the opinion of the court as to its admissibility on hearing the argument in this cause. The counsel for the United *States* also offered in evidence the deposition of Antonio Alvarez as taken in the case of John Breward *vs.* The United States, the same being so copied as to be made applicable to this case, and a paper in the case of Juan Russel, dated Havana, 4th March, 1815. The counsel for the United States also offered in evidence the deposition of Antonio Alvarez as taken in the case of John W. Lowe and others, against the United States, the same being so copied as to be made applicable to this case.

And the testimony and evidence in this case on both sides being now concluded, argument of counsel was heard as well on the part of the claimants, as on that of the United States, but the court not having time to hear further argument on this day, the further hearing thereof was postponed till Monday morning at 10 o'clock.

And afterwards at the same term of July, in the year of our Lord one thousand eight hundred and thirty-four, to wit, on Monday the twentieth day of said term, and the eighteenth day of the month of August, the following entry of record was made in this cause, to wit:

Cause submitted.

OLIVER O'HARA for himself and for the other heirs of Daniel O'Hara, dec'd, *against* THE UNITED STATES OF AMERICA.	Land claim, 15,000 acres.

This day came as well the counsel for the said claimants, as the counsel for the United States, and the court proceeded in the further hearing of this cause, and argument of counsel on both sides was on this day concluded, and this claim submitted to the court for its decree therein.

Evidence and testimony offered and read in this cause at the hearing thereof, and numbered from *one* to *fourteen* inclusive, to wit:

Memorial for Grant.

No. 1.

Offered and read by claimant.

TRANSLATION.

HIS EXCELLENCY THE GOVERNOR:

Don Daniel O'Hara, lately admitted an inhabitant of this province, under the protection of his Catholic Majesty, with due respect represents to your excellency, that intending to settle in this province with a considerable property and his large family, after having ascertained that all or the greatest number of all those who had petitioned for lands have solicited to have them located in the southern district in the vicinity of Musquito river, and after having consulted many neighbors in reference to vacant lands, as he has no wish to enter into disagreeable litigation with other petitioners, or to injure them in any way, he begs of your excellency, be pleased to grant him fifteen thousand acres of land out of those lands which are vacant between the rivers St. John and St. Marys, in the place called Nassau, and in case the said vacant lands do not comprehend the number of acres he solicits, he begs your excellency to have the goodness, when the survey will take place, to grant him the deficiency on the river St. Marys, and he obligates himself to take possession of the said lands within the term of six months; which favor, he doubts not, he will receive from the noble munificence of your excellency.

St. Augustine of Florida, third of September, one thousand eight hundred and three.

DANIEL O'HARA.

DECREE.

St. Augustine, 3rd September, 1803. Let the commandant engineer inform on the subject.

WHITE.

Having taken cognizance of the petition, and in obedience to the preceding decree, I represent to your excellency, that the culture of the lands solicited by the petitioner does not interfere with the defence of the province, therefore, as far as the department of fortifications is concerned, your excellency may grant to him the number of acres you see fit. This is all I have to represent to your excellency, who will determine according to your pleasure.

St. Augustine of Florida, 5th September, 1803.

NICOLAS BARCELO.

Grant to O'Hara.

DECREE.

St. Augustine, of Florida, 5th September, of one thousand eight hundred and three. The lands solicited by the petitioner *is* hereby granted to him in the place indicated, without prejudice to a third party, and until the time when, in conformity to the number of workers whom he may have to cultivate them, the corresponding number of acres may be surveyed to him; it being well understood that he shall not claim indemnity for damages or losses in the case; that under the apprehension of an invasion, or other motives relating to the royal service, he be ordered to retire in the interior of the province; and that he will take possession of the said land within the term of six months from this date.

WHITE.

A certificate thereof was issued.

PIERRA.

ST. AUGUSTINE, 23d May, 1829.

I certify that the preceding is a correct translation of the Spanish document annexed.

A. GAY, *Translator and Interpreter*
Of the Superior Court.

No. 2.

Being the depositions of Francis P. Fatio, Thomas Murphy, George I. F. Clarke, Francis Marien, William Travers, Richard Weightman, and Charles Robion, taken in this case; which, with the documents thereto annexed, were read in evidence in this case by the claimant, subject to the objections of the United States attorney, to wit:

TERRITORY OF FLORIDA, *Eastern District.*

In the superior court of said district holding jurisdiction in chancery.

OLIVER O'HARA and others, heirs of Daniel O'Hara, dec'd, *vs.* THE UNITED STATES.	Petition for confirmation of title to lands.

Interrogatories to be exhibited to William Travers, Francis P. Fatio, Richard Weightman, George I. F. Clarke, Thomas Murphy, and Francis Marien, witnesses in the above case.

Interrogatories to Fatio.

To Francis P. Fatio.

First. Were you or were you not captain of the party under the Spanish Government in 1819 for that part of this province called Saint Johns, and did you not reside at Pablo, near the place known as the Bluff, on the river St. Johns?

Second. Do you or do you not recollect that in the year aforesaid a schooner called the Spring Bird, Captain Robert Robertson, was laying off the ship yard in the river St. Johns, had a number of negroes on board ,the property of Daniel O'Hara, Esquire?

Third. Were or were not the said negroes taken forcibly away from the said schooner, and out of the custody of the captain, and carried to Amelia island, by an officer and party of armed men of the United States army?

Fourth. Are you or are you not apprised, or have you not now any reason to believe that the said negroes were regularly and duly entered at the custom house at St. Augustine, under the sanction of the governor, and if not so regularly entered, could they have been so publicly brought into this province as they were in the said schooner Spring Bird from Jamaica, without being forfeited?

Fifth. Do you or do you not know that by the constant unsettled state of this province north of St. Johns river, as well from the dangers to be apprehended from the Indians as from the rebellion and revolution under which the province labored until the cession, that it would have been impossible, with any kind of safety, to have attempted to complete a settlement in that part of the province, to wit, on Nassau river, near the head?

Sixth. Were you or were you not obliged to abandon your own plantation on the east of the St. Johns, after losing a large proportion of your negroes from the causes above mentioned?

Seventh. Has it or has it not come under your own immediate knowledge, from the circumstance of being engaged in some of the many parties sent out against the Indians, that murders and robberies occurred within a mile or two of the city of St. Augustine, committed by the Indians and others on the inhabitants of this province?

Eighth. Are you or are you not acquainted with the hand writing of Thomas Travers, George Flemming, and Daniel O'Hara, all of whom are now dead?

Ninth. Be pleased to examine the letters hereto attached, marked from No. 1 to 7, inclusive, and say whether they are written by those whose names are respectively signed to them, to wit: are those signed Thos. Travers in the hand writing of said Thomas Travers; are those signed George Flemming in the hand writing of the said George Flemming; are those signed Daniel O'Hara in the hand writing of said O'Hara?

C. DOWNING, *for plff.*

Cross Interrogatories to be propounded on behalf of the United States to Francis P. Fatio, the above named witness.

First. How long did you act as judge and captain of the district called St. Johns, previous to the transferring Florida to the United States?

Second. Did the said Daniel O'Hara ever apply to you or to any of the authorities of East Florida, to protect him in the settlement of fifteen thousand acres of land on Nassau river, the same which is now claimed by Oliver O'Hara and others in this suit? If he did, say when, and to whom, and the result of said application.

Third. Have you any knowledge that the negroes mentioned by you in your answer to the second direct interrogatory were the property of the said Daniel O'Hara except from report?

Fourth. In what manner was the permission which you have mentioned granted to new settlers to introduce slaves from foreign ports for the purpose of being settled in the country?

Fifth. Please to state when the unsettled and unsafe state of the country which you have mentioned above commenced, and how long it continued?

Sixth. On what part of Nassau river is the said tract of fifteen thousand acres of land situated?

Seventh. Please to state whether Nassau river is or is not situated between the St. Johns and the St. Marys rivers, and have not plantations been settled in that district of country since the year 1803?

THOS. DOUGLAS,
United States Attorney, &c.

Interrogatories to Murphy.

To Thomas Murphy.

First. Were you or were you not a resident of St. Augustine in the year 1819, and acquainted with Daniel O'Hara, Esquire?

Second. Do you or do you not recollect that in the months of September, October, November, and December, in the year aforesaid, that a schooner called the Spring Bird, Captain Robert Robertson, was laying in the river St. Johns, East Florida, at a place called the Ship-yard, and had a number of negroes on board, *to* [the] property of Daniel O' Hara, Esquire, which was said to be intended for the settlement of the lands of the said O'Hara in this province?

Third. Were or were not the said negroes taken forcibly possession of from said schooner, and carried to Amelia Island by an officer and a party of armed men of the United States Army?

Fourth. Were you or were you not apprised, or have you not now, and what, reason to believe, that the said negroes were regularly and duly entered at the custom house at St. Augustine under the sanction of the governor; and was it not publicly known that

the said negroes were brought from Jamaica in the said schooner for the purpose of settling the lands of the said O'Hara in this province?

Fifth. From the public manner of the introduction of these negroes, could they have been so brought in this province unless under the sanction of the Government?

Sixth. Did you or did you not hear Daniel O'Hara, Esquire, at or about the time of the introduction of the negroes aforesaid, frequently declare that the said negroes were introduced for the sole purpose of settling and cultivating the lands of the said O'Hara, Esquire, in this province?

C. DOWNING, *for pl'ff.*

Cross Interrogatories to be propounded to Thomas Murphy, one of the above named witnesses, on behalf of the United States.

First. If you answer the first foregoing direct interrogatory in the affirmative, please to state when your acquaintance with the said Daniel O'Hara commenced; where he resided from the year 1803 until the year 1819; and what business, trade, or occupation he followed during that period?

Second. If you answer the second foregoing direct interrogatory in the affirmative, please to state how you know that the schooner therein mentioned was lying in the river St. Johns at the place and time in the same direct interrogatory mentioned, and how you know that she had negroes on board, the property of Daniel O'Hara, Esquire, and, if she had, how do you know that the said negroes were intended for the settlement of the lands of the said O'Hara in East Florida, or that the said O'Hara had any land in East Florida; and, particularly, whether or not all your information respecting the particulars is not founded entirely on report, and, if not, please to state which of them you know of your own knowledge, and how you obtained that personal knowledge?

Third. If you answer the third foregoing direct interrogatory in the affirmative, please to state whether you have any knowledge that the said negroes were forcibly taken from the said schooner and carried to Amelia Island, as therein mentioned, except from report, and state also particularly the cause of their being thus taken and carried to Amelia Island?

Fourth. Do you know that said negroes were regularly entered at the custom house at St. Augustine under the sanction of the governor; if yea, please to state how, when, and from whom, you obtained such knowledge?

Fifth. Might not the said negroes have been illegally introduced into the said province of East Florida, and might or might not the carrying away of the said negroes to Amelia Island have prevented the interference of the Spanish authorities at St. Augustine respecting them?

Sixth. Is there any other matter or thing within your knowledge

relating to the matters in controversy in this suit, which may be of service to the said United States in the trial of this cause; if there is, please to state them as fully and particularly as though you was now thereunto specially interrogated?

THOS. DOUGLAS,
United States Attorney, &c.

Interrogatories to Clarke.

To George I. F. Clarke.

First. Do your or not know of a grant, made in 1803, for 15,000 acres of land, to Daniel O'Hara, now deceased, by Governor White, then Spanish Governor of East Florida?

Second. What office did you hold under the Spanish Goverment in 1819?

Third. Will you state whether you did or did not survey for Daniel O'Hara the tract aforesaid?

Fourth. Had or had not the said land been previously surveyed by one John Purcell, in 1811?

Fifth. What was the official situation of the said Purcell, and what weight or credit is due to a survey made by him?

Sixth. At what time, if at all, did the said O'Hara obtain from your office a copy of the survey made by said Purcell?

Seventh. Were there any other steps or measures taken by the said O'Hara, or by you as his agent, to take possession of and cultivate said lands; and, if any, what were they?

Eighth. Did or did not a resurvey by you as surveyor general, and a permit given by the governor to have them so surveyed in 1811, to Purcell, and in 1819 to yourself, operate as a recognition of the grant made in 1803, so as to prevent a forfeiture of the claim, if such forfeited had been incurred by lapse of time by the said O'Hara?

Ninth. Were or were not lands ever considered by the Spanish Government as forfeited by the grantee, until they were granted to other applicants?

Tenth. If you know of any other measures taken or attempts made by the said O'Hara to settle said lands, be kind enough to state them, together with the cause of failure in the said O'Hara, and when such failure took place?

C. DOWNING, *for plff.*

Cross Interrogatories to be propounded to George I. F. Clarke, on behalf of the United States in the above cause.

First. If you answer the first foregoing direct interrogatory in the affirmative, please to state the nature and extent of your knowledge in relation to said supposed grant of fifteen thousand acres of land, and when, how, and in what manner you obtained said knowledge?

Second. If you state in answer to the third foregoing interrogatory, that you surveyed the said tract of land for Daniel O'Hara, please to state when, and by whose authority you did so; and if it had been surveyed by one John Purcell in 1811, why did you resurvey it?

Third. Why did the said Daniel O'Hara obtain [if he did obtain] from your office a copy of the survey made by said Purcell?

Fourth. If any permit was given to the said Purcell in 1811, or to yourself in 1819, to survey said land, please to state whether said permit was in writing or not?

Fifth. Were lands which had once been granted by the Spanish Government ever re-granted to other individuals, unless they had first become forfeited?

Sixth. If you know of any other matter or thing which may be of service to the United States, on the trial of this cause, please to state it as fully and particularly as though you was now thereunto specially interrogated?

THOS. DOUGLAS,
United States Attorney, &c.

Interrogatories to Marien.

To Francis Marien.

First. Were you or were you not a resident of this province during the year 1803, and acquainted with Daniel O'Hara, Esquire?

Second. Is it or is it not within your recollection that the said O'Hara did attempt the settlement of the lands granted to him by Governor White in 1803? And do you not know that the said O'Hara had engaged a carpenter to build him a house on said lands, on the river Nassau, that the said house was built, and that the said carpenter has since died?

Third. Do you or do you not know that in consequence of the disturbed state of this province since 1803, until it was taken possession of by the United States, from rebellion and revolutions, as well as the apprehension of the dangers caused by the Indians, that a settlement upon any lands north of the river St. Johns could not be effected with any kind of safety, particularly with a large number of slaves?

Fourth. If you answer affirmatively to the interrogatory, please to state at what time the said house was built by the carpenter aforesaid, the name of the said carpenter, with all other and every circumstance within your knowledge going to prove the attempted settlement of said land by said O'Hara.

C. DOWNING, *Atty. for plff.*

Cross Interrogatories to be propounded on behalf of the United States to Francis Marien, one of the above named witnesses.

First. If you say that you resided in East Florida, in the year 1803, and was acquainted with Daniel O'Hara, Esquire, and answer

the second preceding interrogatory in the affirmative, please to state what the said O'Hara did towards effecting a settlement on the lands mentioned in said interrogatory, and how you know that any such lands were granted by Governor White to the said O'Hara in 1803, or that he had engaged him a carpenter to build him a house on said land, where said engagement was made, or said house to be built, who the said carpenter was, where he lived, and when he died?

Second. Please to state at what time the disturbed state of the province, and the rebellions, revolutions, and apprehensions from dangers to be caused by the Indians mentioned in the third preceding direct interrogatory commenced; was it not in the year 1812, and did it not cease before the transfer of the Floridas to the United States in 1821—and have not plantations been settled in that district of country since 1803? Please to state particularly all you know on this subject.

Third. If you know of any other matter or thing in relation to the matters in controversy, in this suit, which may be of service to the United States on the trial of this cause, please to state it as fully and particularly as though you were now thereunto specially interrogated?

THOS. DOUGLAS,
United States Attorney, &c.

Interrogatories to Travers.

To William Travers.

First. Were you or were you not a merchant, and the agent of Daniel O'Hara, Esquire, in the year 1810, in St. Augustine?

Second. Do you or do you not recollect that in the month of September or October, in the year aforesaid, that the British schooner, Spring Bird, Captain Robert Robinson, with a number of negroes on board, the property of Daniel O'Hara, Esquire, arrived in the river St. Johns, East Florida, from Kingston, Jamaica.

Third. Did you or did you not, as the agent of Daniel O'Hara, about the month of September or October, in the year aforesaid, enter regularly at the custom house of His C. Majesty, in St. Augustine, the above mentioned negroes as the property of Daniel O'Hara, Esq., under an order, or by the legal permission of Don Joseph Coppinger, who was then governor and legal representative of H. C. Majesty, in this province?

Fourth. Did or did you not know, or have you not reason to suppose, that the said Daniel O'Hara, Esquire, had such permission to enter the above negroes, and if he had not such permission, could any negroes have been entered unless for settlement of grants of land; and were not the expenses of entering as well as the duties on the above negroes, paid by you as the agent of the said Daniel O'Hara, Esquire?

Fifth. Was or was not the above schooner, Spring Bird, an English vessel, or did she not sail under British colors; and were not the slaves imported in her taken possession of while on board said schooner, then laying in the river St. Johns, East Florida, by an officer and party of armed men of the United States Army, and carried to Amelia Island?

Sixth. Did or did not the seizure [if you shall testify affirmatively to the above interrogatory] defeat and totally prevent the contemplated settlement by the said O'Hara of the lands granted to the said O'Hara by Governor White?

Seventh. Was or was not the said O'Hara a Spanish subject, and were or were not the negroes imported in the said schooner, Spring Bird, the property of the said Daniel O'Hara, and legally imported?

C. DOWNING, *for plff.*

Cross Interrogatories to be propounded on behalf of the United States to William Travers, one of the above named witnesses.

First. If you answer the second preceding direct interrogatory in the affirmative, please to state the number of the negroes which you say were on board of the schooner, Spring Bird, the property of the said Daniel O'Hara, Esquire, and also their respective ages and sex, and what was the value of the said negroes at that time, as near as you can recollect?

Second. If you answer the third preceding direct interrogatory in the affirmative, please to state whether the order or permission of Governor Coppinger, therein mentioned, was verbal or in writing, and if in writing, whether you have a copy of it or not?

Third. If you answer the fourth preceding interrogatory in the affirmative, please to state the amount which you paid as the expense of entering, and for the duties on the above named negroes?

Fourth. If you answer the fifth and seventh preceding direct interrogatories in the affirmative, please to state whether you have a personal knowledge of the facts therein enquired of, or whether you derived your information concerning them from report merely, or from the statements of the said Daniel O'Hara?

Fifth. Please to state how long the said negroes were kept and detained at Amelia Island, and whether they were not restored to the said Daniel O'Hara; and if they were, state particularly what the said O'Hara did with them, and what prevented his taking them to his land [if any he had] on Nassau river?

Sixth. If you answer the sixth preceding direct interrogatory in the affirmative, please to state how and in what manner the said seizure did or could totally defeat and prevent the settlement by the said O'Hara of the lands therein mentioned, and particularly how you know that said lands were granted to the said O'Hara by Governor White?

Seventh. Where did the said Daniel O'Hara reside from the year 1803 until the time of his death, and when and where did he die, and what business or occupation did he follow; please to state particularly all you know on these subjects?

Eighth. Have not a number of plantations been settled between the St. Johns and St. Marys rivers, and also the westward of Nassau river, between it and the Indian country, since the year 1803, and is not the said Nassau river situated between the said rivers, St. Johns and St. Marys?

Ninth. If you know of any other matter or thing relating to the matters in controversy in this suit, please to state them as fully and particularly as though you was now thereunto specially interrogated.

THOS. DOUGLAS,
United States Attorney, &c.

Interrogatories to Weightman.

To RICHARD WEIGHTMAN.

First. Were you or were you not the medical officer of the United States Army in 1819, and stationed at Amelia Island, under the command of Mathew M. Payne, and were you not called to attend one of the negroes of a gang that was taken from the schooner Spring Bird, Captain Robinson, laying in the river St. Johns, East Florida, which said negro was shot by one of the sentinels of the Army of the United States at that station?

Second. Were or were not the negroes after some detention restored to Daniel O'Hara, Esquire, or his agent, by the said Major Mathew M. Payne, in consequence of order received from the Secretary of War of the United States, he being fully satisfied that they were not intended to be illegally entered in the United States, but for a settlement of said O'Hara in the province of Florida?

Third. Please to state, if in your recollection, for what time the negroes were in the possession of the said commanding officer at Amelia Island.

C. DOWNING.
for plff.

Cross Interrogatories, to be propounded on behalf of the United States to Richard Weightman, one of the above named witnesses.

First. If you answer the first foregoing diect interrogatory in the affirmative, please to state how you know that the negro which you was called to attend as therein mentioned was one of a gang that was taken from the schooner Spring Bird, Captain Robert Robinson, while she was lying in the river St. Johns, in East Florida; and particularly, whether you know that there was any such gang of negroes, or whether you have any knowledge of these matters except from report?

Second. If you answer the second preceding direct interrogatory in the affirmative, please to state how you know that the Secretary of War was fully satisfied that said negroes were not intended to be illegally entered in the United States, or were intended for a settlement of said O'Hara in the province of East Florida; and particularly, what the said O'Hara did with the said negroes after they were restored to him as aforesaid, and what prevented his settling them on his lands, if any he had, in East Florida?

Third. Please to state the number and the respective ages and sex of the said negroes, and what they were worth at the time that you was called upon to attend the wounded negro as aforesaid?

Fourth. Please to state how far it is from Amelia Island to the head of Nassau river, and whether said Nassau river is not situated between the St. Johns and the St. Marys rivers or not; and also, whether or not there have not been a number of plantations settled in that district of country since the year 1803, and particularly, since the transfer of the Floridas to the United States?

Fifth. If there is any other matter or thing within your knowledge relating to the matters in controversy in this suit, please to state them as fully and particularly as though you was now thereunto specially interrogated?

THOMAS DOUGLAS,
United States Attorney, &c.

Interrogatories to Robion.

To Charles Robion.

First. Were you or were you not acquainted with Charles O'Hara, now deceased?

Second. Do you or do you not know the hand writing of the said Charles O'Hara?

Third. If you answer the second interrogatory in the affirmative, be pleased to examine the letters hereto attached, to wit: No. 1, dated Charleston, 3rd February, 1804, and No. 2, dated also at Charleston, 24th March, 1804, and say whether they are or are not in the hand writing of the said Charles O'Hara?

C. DOWNING, *for pl'ff.*

Cross Interrogatories on behalf of the United States to be propounded to the above named witness.

First. If you answer the second foregoing direct interrogatory in the affirmative, please to state whether or not you ever saw the said Charles O'Hara write, and whether you know the said hand writing from having seen him write or otherwise, and if otherwise, how?

Second. If you know of any other matter or thing in relation to the above named case, which may be of service to the said United

States, on the hearing of this cause, please to state it as fully and particularly as though you was now thereunto specially interrogated?

THOS. DOUGLAS,
United States Attorney.

Thomas Douglas, United States attorney for the district of East Florida, for and on their behalf, reserves the right of objecting to any of the foregoing direct interrogatories, or the answers thereto to which he would have a right to object if the witnesses, on the hearing of this cause, were introduced and examined in open court, *ou tenas;* he also reserves the right of objecting to the introduction of the aforesaid letters.

THOS. DOUGLAS,
U. S. Att'y.

Letters referred to Robion.

Letters referred to in the foregoing Interrogatories to Charles Robion, and numbered *one* and *two*, viz:

No. 1.

CHARLESTON, March, 24th, 1804.

Doctor THOMAS TRAVERS:

DEAR SIR: I received your favor of the 8th March; I have also received letters from my father at Kingston, dated 23d February, wherein he mentions that he expects to leave that in about 10 or 12 days, therefore I now expect his arrival almost daily, after which, you may rest assured, he immediately proceeds for St. Augustine, as I know nothing will alter his mind on that score. Mr. Buyck has been for some time past in the country, which prevents his writing. The certificate you enclosed will not do to cancel the bond in the custom house. I here enclose you a form which I will thank you to have completed, and returned by the first opportunity; as there is no American consul at your port, that part may not be taken any notice of. The proceeds of Temberton's acceptance not having been remitted as we requested, I have drawn on Philadelphia for the same, and have paid, without the money coming in from that place, $200 *dollars*, on account of your draft for $450, and will be ready when McClure, the holder of Mr. Lawrence's draft for $1,000, returns from Savannah, to take up the same, as well also, in a few days, pay the balance of the $450 bill; it is to me a most unaccountable thing, when our friends received the money they did not send it on as requested.

I remain, very respectfully,
Dr. sir, your obt. servant,
CHARLES O'HARA.

On our D. O'H's arrival with you, he will fully explain to your satisfaction the great disappointment from our Philadelphia friends, and which has hurt me much that your bills with Mr. Lawrence's should not have been paid at their maturity.

Very respectfully, your obt. serv't,
CHARLES O'HARA.

No. 2.

CHARLESTON, February 3d, 1804.

Doctor THOMAS TRAVERS:

DEAR SIR: My father, on leaving this for Kingston, Jamaica, desired me, by the first opportunity, to write you, which pleasure I now have by Captain Decosta; he has gone to that place to get a parcel of new negroes, with an intention of immediately setting out, on his return, [which I hope will not be longer than six weeks] to put his plan in full execution in the Floridas; negroes are to be had here but high, and can be got in Jamaica on much better terms; you may rest satisfied he is very anxious to get on with you, and you may depend on seeing him directly on his return. We, at the maturity of Mr. Buyck's bill on us for one thousand dollars, in your favor, paid; and we sent on *to* Philadelphia Mr. Taylor's bill on Mr. Pemberton, of that place, and, on the 1st November, received from our friends the following:

PHILADELPHIA, Oct. 15th, 1803.

We duly received your favor enclosing Mr. Geo. Taylor's drafts, amount'g to twenty-four hundred and fifty dollars, on Mr. Joseph Pemberton, which were accepted on the 12th inst., when received; the proceeds shall be disposed of as you direct.

Your obt, serv'ts,
[Signed] SAVAGE & DUGAN.

Our instructions were to send on the proceeds, by post, in bank notes, and since then we have had no advice whatever of the bills; we have not a doubt but that they have been paid, or they would have been returned; our friends, S. & D., are punctual too. By every post we expect the money, when Mr. Lawrence's draft for one thousand dollars, and yours, for four hundred and fifty, shall be paid. Mr. Reed has arrived, and I have had some conversation with him, and remain very respectfully,

Dear sir, your ob't serv't,
CHARLES O'HARA.

Letters referred to Fatio.

Letters referred to in the deposition of Francis P. Fatio, numbered *one* to *seven* inclusive.

[E. B. Gould, No. 1.]

St. Augustine, 16th September, 1803.

Daniel O'Hara, Esq.

My Dear Sir: Since your departure from here many adventurers have arrived from Georgia, on their way to Musquito, and some have gone on, but others more prudently remained behind to see if any lands be yet vacant before they undertake the journey.

Indeed, people are so infatuated with speculation, that those who have already great abundance are privately purchasing from the lower class their small head rights; but government has been so alarmed at this, that an absolute law has been issued, forbidding any to sell, as their titles are not yet sufficient for that purpose; and I think it is a just law. You know how much I advised particular friends to beware of such steps.

I have been furiously attacked by a few individuals for hands; either in purchase, or to plant upon shares. Their chief design is on that of Tonin, which they wish for at any price. I have informed them, that my determination was not to sell one inch, and that you and I had mutually engaged with each other, and together. This will, I hope, put a stop to their pretensions. We must look sharp, keep our affairs in strict secresy, and avoid such tools as cannot be of use; I always would wish to drink at the fountain head, and pass by the muddy water; in fine, to be more explicit, I have no opinion of our scrivinors—this between ourselves.

We [you and I] have no difficulties to encounter, and we shall endeavor to avoid them as much as possible; all my dependence is on my lands for the payment of a few debts, and a sure support for my family in case of accident. In the management of this, you can judge, having already a knowledge of my sentiments, and I shall trust entirely to you.

Should this province be given up shortly, it would be in vain to go to any great length respecting the grand plan; the space of 1, 2, or 3 years might bring about wonders. In planning this, I have nothing to do; I shall, however, be faithful to every trust.

The captain general has given orders, that negroes are not to be admitted, without inspection, into these provinces, and as this is the only port for the purpose, you will be obliged to come here at all

events; so you may as well clear out for this port—indeed there is no other port of entry.

I am, my dear sir, your very
Sincere, ob't, humble servant,
THOS. TRAVERS.

N. B. Mr. B. is not to know any thing of this; neither do I wish others to know it—it is for private inspection only.

T. T.

[E. B. Gould, No. 2.]

St. Augustine, 7th June, 1804.

My Dear Friend: Altho' we had lately arrivals from Charleston, I had not the pleasure of a single line from that quarter.

A gentleman, who came from Savannah, and the newspapers of that place, have given the disagreeable account of your trouble and disappointments. It grieves me to the heart to hear what you have suffered, and I shall continue unhappy in mind until you favor me with an information or explanation of your affairs respecting that cursed privateer.

If you are still determined to come this way, I beg and earnestly request you will not lose any time; and should your business detain you, send me at least a white man or two, with some negroes, to take possession of your lands. I'll expect a letter from you by the first opportunity, and shall, meanwhile, continue your truly sincere, affectionate, humble servant.

THOS. TRAVERS.

Dan'l O'Hara, Esq.

P. S. Mrs. Travers desires to be remembered to you.

[E. B. Gould, No. 3.]

St. Augustine, 16th Sept., 1803.

Dear Sir: Agreeable to my promise on your leaving here, I shall not neglect the opportunity of writing you by Captain Hull's schooner, but I am sorry by this I am not able to give you as particular information as I could have wished, respecting your intended settlement on St. Johns, owing to the continual heavy rains we have had here these eight days past, so much so that all our creeks between here and there are now a swimming. What I can tell you is, that you may rest assured you have as eligible a situation and cleared tract of land, fit for the cultivation of cotton, as I know of to make a beginning for your establishment in this country. I shall recommend you to bring with you the following articles, necessary for plantation use, which are not to be purchased here: 2 whip saws; 2 x-cut do.; falling axes; hoes, best kind; ½ doz. grubbing do.; ½ doz.

spades; 2 grindstones; hatchets, large and strong; 3 pair queen stones, not too large; carpenter's tools; an ass't of nails; casting net, fish hooks, &c.; ½ doz. well finished lancets; rifles, small bore, with brass boxes; a good large canoe boat, sufficient to take a horse over St. Johns river, if necessary.

Wishing you a soon and safe return here, I remain, dear sir, with much esteem, your ob't serv't,

GEO. FLEMMING.

Mr. Fatio's family, with mine, desire their respects to you and yours.

[E. B. Gould, No. 4.]

ST. AUGUSTINE, 13th November, 1819.

My dear Sir:

I wrote you this morning by Mr. Jos. Coppinger, which no doubt you will receive before this. Capt. Brown has been detained to make a memorial for the introduction of the negroes you mention, which I find is more proper to have the permission in his name, as a new settler and subject, agreeable to an edict of the king for that express purpose, granting that permission for the encouragement of new settlers, and which is not allowed to the old inhabitants. At the same time, any negroes you may wish to introduce into the country, you can consign them to me, after their arrival, if you think proper. This is a business to be settled between you and Captain Brown, and my services shall not be wanting.

Your friend, Mr. Wragg, has not as yet made his appearance here. When he does, you can rest assured, I shall feel a pleasure in paying him all the attention in my power.

Do you propose taking your Jersey wagon with you? If not, I should be very careful of it until you return here, and should get it to town, where it will be more safe than in the country.

It appears we are strongly threatened with an invasion of the country before long. This, we, as individuals, cannot avoid, and no use to be thinking much about it, until it comes, and then we must do our duty, and the best we can to support the flag we have solemnly sworn fidelity to.

Mrs. Flemming, Mary, George, with Eliza Fatio, desire again to be kindly and affectionately remembered to you. Wishing you a pleasant passage, with every happiness, I remain, my dear sir, your ever affectionate friend and sincere servant,

GEO. FLEMMING.

I will thank you to tell our friend Murphy that I shall write him by first opportunity from here. When his letter arrived here, I was

on St. Johns—at nearly every settlement on the river where I heard of your cruise up it with Mr. Alexander.

Directed to DANIEL O'HARA, Esq.

[E. B. Gould, No. 5.]

ST. AUGUSTINE, 18th May, 1819.

My dear Sir:

I wrote you this morning by our mail, which you will receive early to-morrow. This, I expect, will be delivered to you by William Travers, who talks of going to Pablo to-morrow. Since writing to you, and from what I mentioned to him yesterday, he tells he will take to you a certified copy of his sale to you of their tract, formerly called Governor Tonyn's. From what I can learn, the papers that the governor enclosed you by mail will be satisfactory to you. As he did not mention the purport of the contents to me, I consider it would not be so proper to be too inquisitive, but have every reason to believe that he has done the most in his power for you, or that his situation would allow him to do. Of this you will inform me your opinion respecting the documents you will receive by this day's mail, if you consider them sufficient. When the escribano is more at leisure, I shall get him to take the affidavits relating to your settlement on St. Johns, by Doct. Travers, for you, as your attorney.

With true and affectionate regards to you from every one of my family, I remain, wishing you success, with health and every happiness, your sincere friend,

GEO. FLEMMING.

I forgot to thank you, in George's name, for Jackson's Bookkeeping, you were so kind to send him.

[E. B. Gould, No. 6.]

ST. AUGUSTINE, 4th August, 1821.

My dear Sir:

I write you a hurried line on my return to town, finding an opportunity from here this evening for your city, to acknowledge the receipt of your ever esteemed favor of the 12th of June last. Mr. Geo. Clarke is now here, and I have fully communicated to him the part of your letter which relates to your business with him, which appears to be satisfactory to him. At the same time, I must take the liberty to recommend to you to discharge his demand for survey as soon as you can make it convenient. He returns to-morrow to St. Marys, and has promised me he will use his endeavors to put a family on your lands on Nassau, to begin a settlement and take pos-

session; which is very necessary should be done, and the sooner the better. This grant I consider a very valuable property, and should not be neglected.

Two days before the cession took place, Mrs. Flemming arrived here from Havana and Matanzas, in excellent health and spirits, much pleased with that delightful country, as she calls it, and the reception she met with from our good friends at Matanzas, all wishing, and strongly recommending, our settling there. This is all very well; but to enable me to do this as I should wish, I must endeavor to dispose of some of my landed property, before I could think of making a movement with my family. Here I have a home —and I should not wish to be without one in Florida while I live— with a house in town; and my small tract of land on Black creek, alongside of you, I do not mean to part with. In the last arrival here, I expected to have had the pleasure, from what you mention, of seeing your son, Mr. Arthur O'Hara. If his time would permit it, I should recommend his taking a trip this way, where I can assure him he will find friends that will be glad to see him. The governor is well, and desires to be remembered to you: he proposes remaining here for some time: his son Joseph is much recovered. Mrs. Flemming, with every one of my family, desire their affectionate remembrance to you, with Mrs. O'Hara and family. Wishing you every happiness, I remain, dear sir, your friend and sincere servant,

GEO. FLEMMING.

Directed to DANIEL O'HARA, Esq.

[E. B. Gould, No. 7.]

CHARLESTON, 9th October, 1803.

My dear Travers:

I am sorry to say the great business we had some talks of, and what I went on, has all fallen to the ground, and no more to be thought of at present. I shall, God willing, inform you of all on our meeting; so that Buyck must come away without any loss of time. I should be with , but the assembly of this State meets in November, and our friend Buyck's business comes on, and I have given him my word to assist him. I, God willing, be with you, negroes and white, to large number of both, in all the month of December, in order to make our settlement for yourself, Nicholson, Buyck and self, with a vessel with all the small memorandums for our friends. I cannot write you what and every thing that has passed, but will inform you in person. Hull has not arrived, or any other vessel from your place, since my return. Your bills I have sent forward, and as soon as accepted, shall write you.

You may depend I shall, God willing, be with fifty negroes, all workers, and ten or fifteen white men. If Buyck should want one or two hundred dollars at his coming away, his bill will be good on

me. I do not write him, for reasons I will inform you of at our meeting. My love to your good family and all friends.

I am yours, sincerely,

DANIEL O'HARA.

Answers of Fatio.

OLIVER O'HARA and others, heirs of Daniel O'Hara, deceased,
vs.
THE UNITED STATES.

The Answers of Francis P. Fatio to the Interrogatories propounded to him in this cause, taken before Elias B. Gould, Judge of the county of St. Johns, by consent of the parties, reserving all legal objections. Francis P. Fatio, being duly sworn, in answer to the

First interrogatory, says, That he was captain and judge of the district called St. Johns, in the year 1819, and resided at Pablo, near the Bluff, on the river St. Johns.

Second. That he does recollect the arrival of the said schooner during that year, having a number of negroes on board, but how many he does not know, said to be the property of Daniel O'Hara.

Third. Went to the ship yard, where the schooner was lying, a day or two after, and there heard that the negroes on board of said schooner had been taken forcibly away by a party of the United States troops, and carried to Amelia Island. This was publicly known in the neighborhood of St. Johns, where witness resided, but he did not personally know the fact: it was a matter of public report.

Fourth. Witness has every reason to believe that the said negroes were regularly entered at the custom house at St. Augustine, as they were brought in openly. Had there been any irregularity with respect to them, witness has every reason to believe he would have received orders from Governor Coppinger to interpose his official authority. He knows that new settlers had permission granted to them to introduce slaves from foreign ports, for the purpose of being settled in the country, and none but new settlers had that right.

Fifth. Witness knows that the country was in such an unsettled state at the time referred to, that there was no safety in the country, and more particularly on the west side of the St. Johns.

Sixth. Yes, I was. I lost thirty-two negroes in 1812, and four more *was* stolen after that; and the witness' houses and plantation on the east side of the river were burnt down and destroyed, cattle, stock, and all.

Seventh. Yes, even in time of peace, under the Spanish Government. In 1802, on the river St. Johns, witness and his father were robbed of thirty-nine negroes by the Indians from Micasucky.

Eighth. Witness answers yes, and has often seen them write.

Ninth. Witness answers that the two letters herewith annexed, marked "E. B. Gould," and dated "St. Augustine, 16th September, 1803," and "St. Augustine, 7th June, 1804," each signed "Thos. Travers," are in the proper hand writing of the said Thomas Travers, now deceased; that the four letters marked "E. B. Gould," dated "St. Augustine, 16th Sept., 1803," "St. Augustine, 18th May, 1819," "St. Augustine, 13th Nov., 1819," and "St. Augustine, 4th August, 1821," and signed "Geo. Flemming," are in the proper hand writing of the said George Flemming, now deceased; and that the letter hereto annexed, marked "E. B. Gould," dated "Charleston, 9th October, 1803," and signed "Daniel O'Hara," is in the proper hand writing of the said Daniel O'Hara, now deceased.

Cross Interrogatories.

First. He answers that he was accompanied by Governor Kindelain, as captain and judge of the St. Johns District, in 1813, and he continued as such, and acted in that capacity, until the transfer of the Floridas to the United States, in 1821.

Second. Witness does not know that he ever applied to any one.

Third. Has no knowledge that the negroes were the property of the said Daniel O'Hara, except from report. They were called so, but O'Hara was not present.

Fourth. Witness answers that he does not know.

Fifth. He answers, that from the year 1812, until the year 1821, at the change of flags, there was no safety in the country.

Sixth. Does not know. Nassau river is between St. Johns and St. Marys rivers. There were a number of settlers on the lower part of Nassau river, but many of them were engaged in opposition to the Spanish authorities. Cannot tell whether plantations have been settled since 1803.

F. P. FATIO.

Sworn and taken before me the 19th day of June, 1829.

E. B. GOULD,
Judge C. C. St. John's County.

Answers of Murphy.

OLIVER O'HARA and others, heirs of Daniel O'Hara, deceased,
vs.
THE UNITED STATES.

The answers of Thomas Murphy to the interrogatories propounded to him on the part of the plaintiffs in this cause, and to be read in evidence on the trial thereof, reserving to the parties all legal exceptions.

Thomas Murphy being duly sworn, to the

First interrogatory, answers, That he was a resident of St. Augustine, in 1819, and was acquainted with Daniel O'Hara.

Second. That he knows, from general reputation, that about the time stated, and at the place stated, the said schooner called the Spring Bird had on board a number of negroes, the property of the said Daniel O'Hara, and intended for a settlement in the province.

Third. The said negroes were forcibly taken away from said schooner by a party of armed soldiers of the United States, commanded by Lieut. Griffiths, and taken to Amelia Island.

Fourth. That he is aware that no negroes could be introduced into the province without the consent of the governor. Witness was, at the time the Spring Bird arrived in the St. Johns, a resident of St. Augustine, and was in the habit of constant intercourse with the governor, and as the arrival of said negroes was a matter of public notoriety, he [the governor] must have been aware of it. It was publicly known that said negroes had been brought from Jamaica, and Mr. O'Hara informed witness that the object of introducing said negroes into the province, was for the purpose of making a settlement in it, and that it was his intention to introduce more, which, witness believes, was prevented by the seizure of the negroes brought in by the Spring Bird.

Fifth. He answers, no.

Sixth. Witness says, yes, as before stated.

Cross Interrogatories.

First. Witness answers, That he knew said O'Hara in Charleston, 1815; he was then a merchant there. Saw him in St. Augustine first in 1819; he then followed no business, witness believes.

Second. That he knows from general reputation of the arrival of the said schooner Spring Bird with said negroes as aforesaid. Witness was board of said vessel a short time after the negroes had been taken away, and was informed there also, that they had been taken away, and was informed there also that they had been taken from on board forcibly. Witness was informed by Mr. O'Hara himself that the negroes belonged to him, and that they were intended for the settlement of the lands of said O'Hara in East Florida.

Third. Witness knows the matter stated in the third cross interrogatory only from general report. Cannot assign any reason for the forcibly taking away of said negroes: it was generally considered a tyrannical and outrageous act.

Fourth. Witness has no other knowledge than that which he has already explained in his answer to the fourth direct interrogatory.

Fifth. The negroes could not have been illegally introduced into the province; their arrival being generally known, and consequently the governor must have known it. Witness believes that the Spanish government did not wish to interfere with the negroes.

Sixth. Witness does not recollect any thing further that may be deemed material in this cause.

THOS. MURPHY.

Sworn to before me, the 23rd June, 1839.
E. B. GOULD,
Judge County Court St. Johns County.

Answers of Clarke.

OLIVER O'HARA and others, heirs of Daniel O'Hara, deceased, *vs.* THE UNITED STATES.

The answers of George I. F. Clarke to the interrogatories propounded to him in the above cause on the part of the plaintiffs.

George I. F. Clarke being duly sworn, in answer to the

First interrogatory, says, That he does know of such a grant: he has seen it.

Second. Witness held the office of surveyor general and other offices in that year.

Third. Witness did survey, by his deputies in 1819, the tract of land referred to.

Fourth. Yes, it was.

Fifth. He acted occasionally as surveyor in the absence of a surveyor general's office. Good credit was always given to his surveys.

Sixth. In 1818.

Seventh. Witness understood from Daniel O'Hara that Doct. Travers had been his agent previous to 1818; in 1818 witness became the agent of said O'Hara; about 1821 he authorized one Tyson, who was then residing on the land, to remain there and keep possession of it for said O'Hara.

Eighth. An order was necessary for Purcell, but not to witness, who was surveyor general.

Ninth. Grants were not considered as forfeited until some steps had been taken by the Spanish government to that effect.

Tenth. Witness understood from Daniel O'Hara that Doct. Travers had been his agent for the formation of the grant until said Travers' death, and that he, the said O'Hara, had furnished said Travers with funds to carry on his settlement. Witness knows nothing further material in this cause.

Cross Interrogatories.

First. Witness answers that the grant was presented to him in 1818 by Daniel O'Hara, and by seeing the grant thus presented, witness possessed a knowledge of it.

Second. On being presented with the grant as aforesaid, witness examined the books and papers of his office, and found a survey there made by John Purcell about 1811. That at the request of Mr. O'Hara, witness sent a surveyor to examine for the lines, which were too much defaced in consequence of long standing, &c., to be sufficiently legible, and at the request of said O'Hara, he had the lines resurveyed in 1819.

Third. Does not know.

Fourth. Knows nothing about a permit to Purcell; only knows that an order from the government was necessary: an order to witness was not necessary, nor does he recollect that one was obtained.

Fifth. No. I believe not.

Sixth. Knows nothing further.

GEO. I. F. CLARKE.

Sworn to before me, the 23rd June, 1839.

E. B. GOULD,
Judge County Court St. Johns County.

Answers of Marien.

OLIVER O'HARA and others, heirs of Daniel O'Hara, deceased,
vs.
THE UNITED STATES.

The answers of Francis Marien to the interrogatories propounded to him in this cause on the part of the plaintiffs.

Francis Marien being duly sworn, in answer to the

First interrogatory, says, That he was a resident of the province of East Florida in 1803, and was acquainted with Daniel O'Hara.

Second. Yes, he did attempt the said settlement in 1803; witness knows that said O'Hara engaged a carpenter, and that a house was built on said land, but does not know whether said carpenter has since died.

Third. Yes; settlements could not be safely made either on the north or south side of the St. Johns, from the causes stated in this interrogatory.

Fourth. Cannot state at what time said house was built. Does not recollect the carpenter's name; only knew him by sight. Knows nothing more in relation to the attempts of said O'Hara to form the settlement.

Cross Interrogatories.

First. He answers, knows nothing further than he has stated; knows from general information that lands were granted to Daniel O'Hara in East Florida: said O'Hara informed witness that he had

engaged a carpenter; the carpenter also informed him that he was employed for the purpose of building the house; and has no further knowledge on the subject.

Second. Wagoners' war commenced first, which witness thinks was so early as 1803, or earlier, and from that time the country was in continual jeopardy and disturbance from the Indians, and from disaffected and evil disposed persons up to the year 1821, so that it was unsafe to form settlements, as already stated. Witness does not know whether any new settlements were formed north of the St. Johns, after 1803. Knows that many of the old settlers were obliged to take refuge to the islands and to St. Augustine, in consequence of the disturbances which existed during the period named.

Knows nothing further.

FRANCIS MARIEN.

Sworn to before me, the 23rd June, 1829.

E. B. GOULD,
Judge County Court St. Johns County.

Answers of Travers.

OLIVER O'HARA and others, heirs of Daniel O'Hara, deceased,
vs.
THE UNITED STATES.

The answers of William Travers, a witness on the part of the plaintiffs, to the interrogatories and cross interrogatories propounded to him in this cause, and to be read in evidence on the trial thereof, subject to all legal exceptions.

William Travers being duly sworn, in answer to the

First interrogatory, says, yes.

Second. He answers, yes, he was the agent of the said schooner.

Third. Yes; the negroes were entered as the property of said Daniel O'Hara as aforesaid.

Fourth. The expenses of entry were paid by witness. Mr. O'Hara must have had an order for their entry, as they could not have been admitted to entry without it. Does not know the purpose for which the negroes were introduced into the province, but supposes they were for the purpose of settling a plantation.

Fifth. The vessel was entered as a British schooner. Believes some of the negroes were taken out of said vessel by some of the American troops from Fernandina; but does not know that all were taken away: they were taken to Fernandina.

Sixth. Does not know; not knowing for what purpose the negroes were introduced.

Seventh. He was a Spanish subject, and the negroes were legally imported, so far as witness has any knowledge on the subject.

Cross Interrogatories.

First. He answers, that he does not recollect how many negroes there were, but thinks there were from sixteen to twenty. Knows nothing of their ages or sex.

Second. All orders for entries were done in writing. Witness has not a copy. It remained at the custom house, and witness thinks it was carried with the other papers belonging to the custom house, to Cuba.

Third. Witness does not recollect the amount of expenses paid. Thinks there wās no duties on the negroes.

Fourth. Witness has no personal knowledge of the negroes having been taken forcibly away as aforesaid, but it was generally reported and believed throughout the province, and never heard it denied. Heard Mr. O'Hara mention the circumstance also.

Fifth. The negroes were kept some time at Amelia Island, but how long he does not know. Believes one or two of them were shot while there. Does not think he ever recovered any of the negroes.

Sixth. That he knows nothing—has understood that Mr. O'Hara had a grant of land.

Seventh. Mr. O'Hara resided, principally, in Charleston; he died in Charleston; he was a merchant.

Eighth. No doubt settlements have been made in the region referred to since 1803, but has no knowledge of any. Nassau river is situated between St. Johns and St. Marys rivers.

Ninth. Knows nothing further in relation to the cause, material to either party.

WILLIAM TRAVERS.

Sworn to before me, the 2d day of July, 1829.
E. B. GOULD,
Judge County Court St. Johns County.

Answers of Weightman.

OLIVER O'HARA and others, heirs of Daniel O'Hara, dec'd.
vs.
THE UNITED STATES.

The answers of Richard Weightman to the interrogatories propounded to him in this cause, on the part of the plaintiffs, taken before Elias B. Gould, Judge of the county court of St. Johns county, by consent of the parties, reserving all legal objections.

Richard Weightman being duly sworn, in answer to the first interrogatory, says, That he was the surgeon who was attached to the

station at Amelia Island, in 1819, which was then occupied by the United States troops; that he was called to attend a negro who had been shot, but before witness arrived there, the negro was dead. Does not know where the negro came from; but understood he was taken from the schooner Spring Bird, commanded by Captain Robert Robinson.

Second. That he knows that the negroes, consisting of twelve or fifteen, or more, were so restored to O'Hara, by delivering them to Captain Robinson.

Third. That the negroes were in the possession of the said commanding officer six or eight weeks.

Cross Interrogatories.

First. He answers, that he knows that the commanding officer gave an order to Lieut. Griffiths, of the United States Army, to proceed to the ship yards on the St. Johns river, to apprehend some negroes that were there. Witness saw the party land on their return, having in possession several negroes, and understood from Lieut. Griffiths that they were taken from on board said vessel, the Spring Bird. Witness knows nothing further except from report.

Second. That he knows nothing further than what he has stated in his answer to the second direct interrogatory.

Third. That there were twelve, fifteen, or more, as before stated; they were all males, and strong athletic men; thinks they were principally young.

Fourth. Knows that it is about twenty miles from Fernandina to the mouth of Nassau river. Nassau river is situated between St. Johns river and St. Marys. Knows nothing respecting the settlement of plantations in the region spoken of since or before 1803, by any individual or individuals.

Fifth. Witness answers that he knows nothing further.

RD. WEIGHTMAN.

Sworn to before me, the 9th day of July, 1829.

E. B. GOULD,

Judge County Court St. Johns County.

Answers of Robion.

OLIVER O'HARA and others, heirs of Daniel O'Hara, dec'd,
vs.
THE UNITED STATES.

The answers of Charles Robion to the interrogatories propounded to him on behalf of the plaintiffs in this cause, who, being duly sworn, answers:

First. That he was acquainted with Charles O'Hara, now deceased.

Second. That witness has seen the said Charles O'Hara write frequently, but it is a long time since: from his recollection of the hand writing of said O'Hara, he believes the letters referred to and accompany this interrogatory, are in the hand writing, and signed by the said Charles O'Hara.

Cross Interrogatories.

First. He says, That he has already answered in his answer to the second direct interrogatory. He has done business with said O'Hara, and has seen him write often, but the length of time is so great that he cannot swear positively; yet he has no doubt the said letters are in the hand writing of him, the said Charles O'Hara.

Second. Knows nothing further.

CHAS. ROBION.

Sworn to before me, the 21st day of July, 1829.

E. B. GOULD,
Judge County Court St. Johns County.

Passport to O'Hara.

No. 3.

Offered and read by claimant.

I grant permission to Don Daniel O'Hara, that he might return to the Port of Charleston in the American schooner, called Liberty.

St. Augustine, fifth September, 1803.

[Signed] WHITE.

I certify the foregoing to be a true and correct translation of the above.

JOS. S. SANCHEZ.
In. & Tr. Sup. Court, E. D. F.

Record in the case of O'Hara vs. Brig Chance.

No. 4.

Offered and read in evidence by claimant, subject to objections of U. S. Attorney.

At a special district court began and held at the court house in the city of Savannah, on Monday the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and four.

Present: The honorable William Stephens, District Judge.

DANIEL O'HARA, *vs.* BRIGANTINE CHANCE, & Cargo, } Libel for illegal capture of American property.

Proclamation made, and this first default ordered to be recorded.

The same, *vs.* The same. } Libel.

It appearing to the court that the cargo of the brig, taken into possession by the Marshal, is of a perishable nature, on motion of Mr. Berrien, proctor for Libellants, it is ordered that the said brig and cargo be appraised by John Craig, Thomas Newell, Thomas Rice, Thomas Dechenaux, and J. S. D. Mountmollin, or a major part of them, and that they make return of their appraisement to this court by to-morrow ten o'clock.

Court then adjourned till to-morrow morning, ten o'clock.

On Tuesday, 29th May, 1804, court met pursuant to adjournment.

Present: The Honorable William Stephens.

DANIEL O'HARA & al. *vs.* BRIG CHANCE & Cargo. } Libel.

The testimony, examinations, and depositions of Daniel O'Hara, John Thomas, Anthony Avers, and Green R. Duke, taken before the clerk by order of court of yesterday, were read and ordered to be filed with the proceedings of this cause. The depositions of Joseph Swain and Daniel Green, taken in the city of Charleston, were read and ordered to be filed with the proceedings in this cause. Charles Harris was also examined as a witness, and his testimony committed to writing.

Proclamation was again made, and this second default ordered to be recorded.

It appearing to the court that the cargo of the said brig is of a perishable nature, and may be injured by being detained until the final decree of this court, and also that the said brig may be injured, on motion of the Libellant, it is ordered that after ten days' notice of the time and place in the public gazettes of this city, given by the Marshal of this court, he do expose at public sale the said brig, her tackle, furniture, and apparel, and that he do also sell nineteen hogsheads and fifty-nine barrels of sugar, twenty-seven puncheons of Jamaica rum, thirty-six and three-fourth dozen bottles of castor oil. Ninety land wood spars being part of the said cargo. And that the said Marshal do, immediately after the said sale, file a return of the same, and the amount thereof, with the clerk of this court.

Whereas, on the return of the citation and monition in this cause, no appearance or claim hath been made or filed, and proclamation twice made in the premises and the defaults recorded; notice is therefore hereby given that unless an appearance and claim be filed by the sixth day of June next, the court will proceed finally to decree, according to the merits of the case.

STILES, *Clerk.*

29th May, 1804.

On the sixth of June, 1804, court met pursuant to adjournment.
Present: the Honorable William Stephens.

DANIEL O'HARA & others
vs.
BRIG CHANCE & Cargo. } Libel.

On motion of Mr. Noel, proctor for claimants, it is ordered that John Brown, a witness, whose testimony is material for the claimants, and a prisoner now confined in jail, be brought up by the Marshal for examination. John Brown as a witness. Thomas Decheneaux sworn as interpreter. Witnesses sworn, John Thomas, William Brown, Daniel O'Hara. Court then adjourned.

On Thursday, the 7th June, 1804, court met pursuant to adjournment.
Present: the Honorable William Stephens, Dist. Judge.

DANIEL O'HARA & al.
vs.
BRIG CHANCE & Cargo. } Libel.

The following witnesses were sworn and examined, and their testimony committed to writing, viz: John Thomas, Daniel O'Hara, Anthony Arms, Benjamin Webley, John McIver, William Brown. The claimants shewing to the court that the testimony of some witnesses residing in South Carolina was wanting, it is ordered that a commission do issue to take such evidence. The court then adjourned till Friday the 15th of June next, at 10 o'clock.

On Friday, 15th June, 1804, special court of admiralty met agreeable to adjournment.
Present: the Honorable Wm. Stephens, Dist. Judge.

DANIEL O'HARA & al.
vs.
BRIG CHANCE & Cargo. } Libel.

The depositions of Paul Dupont and Richard Leake, Esq., were taken and committed to writing. The commissioner on the part of

the libellant was returned, opened, and read, from Charleston. The claimants on oath shewing cause that the commission, by them sent to Charleston, had not been returned, it is ordered that this cause s tand over till Wednesday next, the 20th June, inst.

On Wednesday, the 20th June, 1804, the court met pursuant adjournment.

Present: the Honorable Wm. Stephens, Dist. Judge.

DANIEL O'HARA & al.
vs.
BRIG CHANCE & Cargo. } Libel.

Witnesses sworn and examined: Joseph Henry, a Frenchman, by Paul Rossignol de Bellange, his interpreter, duly sworn—Elnathan Danow, Anthony Arms, John Y. Noel.

DISTRICT OF GEORGIA.—*In Admiralty.*

DANIEL O'HARA & others
vs.
BRIG CHANCE & Cargo. } Libel for Restitution *Decree.*

It appears that the brig Chance sailed from Kingston, in Jamaica, with the cargo laden on board, as stated in the libel, and bound for Charleston, South Carolina: that she was, on her voyage, taken by a French privateer, and detained several days, her ship's papers and considerable property taken away by the crew: that the said brig was afterwards re-taken by a British cruiser, and ransomed by the libellant, Daniel O'Hara, alleging himself to be an American citizen, and that himself and others named were owners and consignees of the Chance and her cargo, engaged in lawful commerce, and that they were also citizens of the United States: after the ransom was effected, the brig and her cargo were delivered up, and, for want of hands, was with danger and difficulty navigated off Charleston bar, and there, on the third day of May, was in five fathoms water, with a signal flying for a pilot, and within one league of the land of South Carolina: that, while waiting for a pilot, the said brig was brought to, arrested and seized, by a French armed schooner, called L'Hazard, Maurice Sache, commander, alleged by the libellant to be without a commission from any authority of the French republic to capture vessels, no commission, or a copy thereof, having been exhibited; and, after such seizure, did keep and retain possession of the said brig and cargo for six days, after imprisoning the said Daniel O'Hara and his sailing master on board a supposed prize ship, called the Rosamond, until their arrival in the port of Savannah, where an escape was effected, and admiralty process served on the said Chance, then aground near Cockspur island.

The proofs exhibited as to the ownership of the vessel and cargo

altogether depend on the testimony of the libellants, O'Hara and Thomas. There were no exhibits, or written evidence, or ship's papers. These appear by the testimony to have been taken by the privateer who made the first capture, and probable, after the recapture, some documents might have passed away to the British cruizer, as an evidence of recapture, and to justify the ransom. It further appears, also, that, at the time of the seizure by the Hazard, the papers of O'Hara were taken away by some of the arresting officers of that cruize, and particularly the ransom certificate. The court has no further evidence on this point than is before stated, except the affidavit of John Y. Noel, Esq., with a copy of a certificate from one James Watts, former captain of the Chance, which would indicate that she was a British vessel. The real question therefore is, was this a capture within a marine league of the coasts or shores of the United States, so as to give this court jurisdiction to award or reject restitution, under the acts of Congress made in such cases.

From the filing of the libel, on the 15th, to the 29th of May, when the monition was returned, all the evidence examined and testimony taken was ex parte, their being neither claim interposed nor appearance entered; and the evidence then introduced went a great way to induce a belief that the capture was an infringement of the territory of the United States, by seized the Chance within a marine league from the shore. That every opportunity should be allowed, the default for a non-claim or appearance was recorded, a further day ordered, and further proof directed by the court.

On the 6th of June, a claim was interposed by citizen Dupont, resident in Savannah, who exhibited a very limited appointment to execute the duties of commissary of commercial relations in Savannah, in the absence of Citizen Sotin, and by that citizen who had been removed to Baltimore to execute the duties of a commissary of commercial relations of the French republic. This claim also sets out with a plea, and should seem to deny the illegality of the capture, alleging an unlawful commerce in the voyage of the Chance, that the persons represented as owners of the brig and cargo are not the real owners, and prays a dismissal of the libel, insinuating, but not formally denying, the jurisdiction of this court as to this case. This claim or defence has been filed, and, on the part of the claimant, every possible latitude has been allowed, testimony taken, and but very little new light thrown upon the subject. Lieutenant Brown, of the Hazard, however, is of opinion that the capture of the Chance must have been considerably more than a league from the Carolina shore or coast. One William Brown, a coasting captain, rather, from his evidence, appears to be impressed that, from the position of the Chance at the time of her capture, she might have been within two miles from the coffin land: on his further examination, and taking the points of the compass she was steering by, he thought she would be at least four or five miles from the land. Captain Webley, in the whole of his testimony, rather inclines to conclude that the Chance, at the time of her capture, as described, must have

been at least from three to three and a half miles from the shore or nearest land. Captain McIver, who appears well acquainted with the bar and coast of Charleston, and its bearings, soundings and distances, is of opinion that, if a vessel were in Lawford's channel, with the south buoy under her weather bow, such vessel could not have been more than a mile and a half, or a mile and three quarters, from the coffin land; and that the Rosamond, on board of which Lieutenant Brown was, as she lay on the 3d of May last, and designated by a mark on a chart that was exhibited, must have been nine miles from the land, and could not have been seen from five fathom hole, an anchoring ground near Charleston bar. Mr. O'Hara, in his further examination, says, at the time the Chance was captured, she was about a cable's length from the south buoy, and within it, and distant from the land about one and three-quarters of a mile, and that the Rosamond was not in sight at the time, but that he saw two or three ships off the bar, among which the ship John, of Charleston, was one. John Thomas, the sailing master of the Chance, states that, while he was a prisoner on board the Hazard, she still pursued the Chance, which latter vessel was making headway, and was very near getting on shore; that he believes they were in five fathoms water. Anthony Arms, a seaman on board the Chance, by his testimony, very fully corroborates what O'Hara and Thomas say, and, in his cross examination, says that the brig was not more than two miles from land; that, still making headway, and getting into shoal water, if he had not assisted in veering her, she would have been on shore; and that she had been waiting for a pilot, the south buoy being under her weather bow. Joseph Swain, a pilot, of Charleston, then on board the said ship John, before spoken, says that he saw the Chance captured, off Lawford's channel, in about five fathoms water, and, to his belief, not more than two miles from Charleston bar. Capt. Green, of the Isabella, then at five fathom hole, is also impressed with a belief that the capture was not more than two miles from the bar. It appears that the testimony of Swain and Green does not explicitly define the distance from the shore. The testimony of Captain Isaac Lessesne, of the ship John, taken under a commission from this court, and where the claimants had an opportunity to cross-examine, proves decidedly that, on the third of May last, he, being on board the ship John, saw the brig Chance stretching for Lawford's channel, and brought to by a schooner with British colors and captured, and that the brig was about two miles from the nearest land, and of consequence within a marine league from the shore: this witness is a native of South Carolina, and sails out of that port, and his testimony stands correctly conclusive as to the time and distance, and verifies what the other witnesses have sworn to as to similar facts. Independently of this, the examination of the Honorable Charles Harris, and testimony of Richard Leake, Esq., go to prove, in a great measure, that, so conscious was one of the lieutenants of the Hazard, when the Chance arrived in Savannah, that the capture was an infraction of the juris-

dictional territory of the United States, that the said prize would be abandoned. This, aided by the testimony of Mr. Duke, the deputy marshal, who, when he took possession of the Chance, under admiralty process, was informed by Captain Sache that he did not intend to contend that the Chance was a prize, and that he gave her up. It was understood, also, that the reason of giving her up was, that she was taken too near the shore, but, if carried to St. Augustine, that she might have been a good prize. On this day, to which the court was adjourned at the instance of the claimant, Joseph Henry, a mariner of the Hazard on board of the Rosamond, says that, when the Chance was captured, it was very distinguishable from the Rosamond, but only with a spy glass, and is under a belief that the brig was quite as far from land as the Rosamond, who was then lying at anchor in seven fathom water, and at least two and a half leagues. Elnathan Danow swears that he was on board the British cruizer when the Chance was retaken; that he was then placed on board of her, and remained there till off Charleston bar, when she was boarded by the privateer, and, as near as he can recollect, was five or six miles from the light-house, in 4 or 5 fathoms water, and within the Rosamond, a prize ship lying at anchor; that, when the brig hove to, she was not more than four miles from the land; he was very unwell and below, but came upon deck when the firing began. Anthony Arms says Danow was sick on board the Chance, and unable to come upon deck to see what was doing, and did not come on deck. There has been great latitude allowed in this case, it being a question of national consequence, involving in it, in some measure, an enquiry into the right of capture by belligerent powers, with whom, for the safety and advantage of the United States, were are on friendly terms. But, as nothing of this has taken the attention of the court, either as to the legal commission of the privateer L'Hazard, or the bona-fide owners of the Chance and her cargo, the only point now to be decided, as before stated, is the question of a capture within a marine league of the coasts or shores of the United States, coming within the jurisdiction of this court, as pointed out by the statute in these cases. Altho' there may be contradictory testimony adduced, it will always be my duty so to construe this statute as to give it all the liberality its words will admit; and I shall indeed extend, as far as I can, especially where cases are doubtful, the defined limits of the American republic, so as to maintain, rather than lessen, its rights and dignity on the waters of the great ocean that rolls along its shores. With this impression, and the evidence before me, I do decree and adjudge *that* the taking and seizure of the brig Chance and her cargo by the schooner L'Hazard to have happened and been done within a marine league of the coast and shores of the United States, to wit, within three miles of the coffin land, [being part of the United States, and within the District of South Carolina,] in violation of the laws of the said United States, and do order restitution of the said brig and her cargo, or the value of so much as has been sold by an interlocutory decree of this court to the

libellants: that the claim of Citizen Dupont, who appears to have acted probably from public duty, be dismissed: and that the costs of this court which have been incurred since the filing of this claim, and adjournment, at the instance of the claimant, be paid by him; and all other costs, with the costs of enrolling this decree, by the libellants.

In respect to the negroes alleged to have been brought in the brig Chance from Jamaica, such kind of traffic is prohibited, as well in South Carolina as in Georgia; and, as several of them are said to be in custody of the marshal, it is ordered that he, under the orders of the municipal officers of this State, take good care of such negroes until dealt with as the law directs.

Dated at Savannah, this 20th June, 1804, and in the 28th year of the Independence of the United States.

W. STEPHENS,
Judge of District, Georgia.

UNITED STATES OF AMERICA, *District of Georgia, ss.*

I, George Glen, clerk of the district court of the United States for the district of Georgia, do hereby certify that the preceding and annexed writing is a true and perfect transcript of the record and proceedings remaining in said court in the case therein mentioned, taken from and by me, carefully compared with the originals filed and being of record in my office.

In witness whereof, I have hereto set my hand, and affixed the seal of the said district court, this twenty-ninth day of August, in the year of our Lord one thousand eight hundred and twenty-nine.

[SEAL.]

GEO. GLEN, *Clerk.*

UNITED STATES OF AMERICA, *District of Georgia.*

I, Jeremiah Cuyler, judge of the district court of the United States for the district of Georgia, do hereby certify, that George Glen, who signed the within certificate, is, and was at the time of signing the same, the clerk of the district and circuit courts of the United States for the district of Georgia; that full faith and credit ought to be given to his acts and attestations as such, and that the said certificate and authentication of the foregoing transcript *is* in due form.

In witness whereof, I have hereto set my hand, this day of , in the year of our Lord 182 .

J. CUYLER.

Certificate of Pierra.

No. 5.

Being exhibit marked A, offered and read in evidence by claimant, subject to objections of United States attorney.

Don Juan de Pierra, Lieutenant of the 3rd Battalion of the Regiment of Cuba, and Secretary of this Government.

I certify that to a memorial presented by Don Daniel O'Hara, soliciting fifteen thousand acres of land of those vacant upon Nassau river, and if there should not be sufficient lands at said place, they should be granted to him of the lands on St. Marys, to the complement of those corresponding to three hundred negroes of his property, the following decree was this day made:

Granted to this interested, the lands which he solicits, without injury to third persons, and until, according to the workers which he may have for its cultivation, there be surveyed to him those corresponding to him, well understood that he is not to claim damages or losses in case that, from fear of invasion or other motives of the royal service, he should be ordered to retire to the interior of the province; and that he shall take possession of said land within the term of six months, calculated from this date.

(Signed) WHITE.

And that it may serve as security to the interested, I give the present in St. Augustine, on the 5th of September, 1803.

(Signed) JUAN DE PIERRA.

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,
Int. and Tr. Sup. Court E. D. F.

Deposition of George Swain.

No. 6.

Offered and read by Claimant.

UNITED STATES OF AMERICA, *State of South Carolina.*

By George Reid, justice of the quorum and notary public, by letters patent under the great seal of the State, duly commissioned and sworn, residing and practising in the city of Charleston, and State aforesaid.

This is to certify whom it may concern, that on the twenty-fifth day of May, one thousand eight hundred and four, and in [L. S.] the twenty-eighth year of the Independence of the United States of America,

Before me personally appeared Joseph Swain, branch pilot of this city, who, being duly sworn according to law, on his solemn oath declares and says: That on Thursday, the third instant, he was in the offing off Charleston bar in his pilot boat; that between seven and eight o'clock that morning, having then gone on board the ship John, the deponent saw the brig Chance from Jamaica for Charleston with a signal for a pilot at foretop gallant mast head, and immediately despatched his boat to pilot her in, but before the boat got up with her, she was brought to, and boarded by the French privateer schooner L'Hazard, and the signal flag hauled down, in consequence of which the boat altered her course. He further declares, that at the time the Chance was boarded by the said privateer, and the said signal hauled down, she was off Lawford's channel in about five fathoms of water, and, to the knowledge of this deponent, not more than two miles from Charleston bar.

JOSEPH SWAIN.

In testimony whereof, I, the said notary, have hereunto set my hand, and affixed my seal notarial, at the city of Charles- [L. S.] ton, the day and year above written.

REID, *J. Q. U. and Not. Pub.*

Petition of O'Hara for Copy of Grant.

No. 7.

Being exhibit marked D, offered and read in evidence by claimant: subject to objections of United States attorney.

SENOR GOVERNOR:

Don Daniel O'Hara, a subject of His Catholic Majesty, and resident of this city, with due respect to your excellency, says: That in September of 1803, he obtained of your excellency's predecessor, Don Enrique White, a concession for fifteen thousand acres of land of those vacant and uncultivated at the place called Nassau and rivers St. Johns and St. Marys; and whereas the certificate which was given to him at the time has been lost, he hopes your excellency will be pleased to order that he be provided by the present secretary of the government with a copy of the preceding, which ought to exist in the archives under his charge. Wherefore, I supplicate your excellency will be pleased to order it to be done as I ask, which will be a favor and justice, which I hope for from the goodness of your excellency.

St. Augustine of Florida, 2d of September, 1818.

(Signed) DANIEL O'HARA.

ST. AUGUSTINE, of Florida, 3d of September, 1818.

As asked for.

(Signed) COPPINGER.

MEMORIAL.

SENOR GOVERNOR AND COMMANDER GENERAL:

Don Daniel O'Hara, a new settler under the protection of His Catholic Majesty, with the respect due to your excellency, reverently states: That it being his intention to settle in this province with his vast property and numerous family, after having learned that all or the greater part of the new settlers have solicited to settle themselves upon the lands at the south, in the neighborhood of Musquito river, and after having consulted with various citizens about the places which are vacant, it not being his intention to thrust himself into disagreeable litigations with other candidates, nor to prejudice them; he supplicates your excellency will be pleased to grant him fifteen thousand acres of those lands which are uncultivated at the place called Nassau, which is situated between the rivers St. Johns and St. Marys, but if, of the vacant lands he solicits, there should not be found the quantity asked for, your excellency will be pleased to grant him, when the survey is made, the land which may be deficient upon the river St. Marys; obligating himself to take possession of the lands within six months; which favor he doubts not to obtain from the noble offices of your Excellency.

St. Augustine, of Florida, third of September, one thousand eight hundred and three.

DANIEL O'HARA.

St. Augustine, third of September, one thousand eight hundred and three. Let the commandant of engineers report.

WHITE.

REPORT.

Informed of the petition, and complying with the preceding decree, I make known to your excellency, that the cultivation of the lands asked for by the petitioner, at the place pointed out, will not impede the defence of the province. Wherefore, as respects the department of fortifications, they may be granted to him the number of acres that your excellency may think proper, which is all I have to communicate to your excellency, who will please to determine according to your pleasure.

St. Augustine, of Florida, fifth of September, one thousand eight and three.

NICOLAS BARCELO.

DECREE.

St. Augustine, of Florida, fifth of September, one thousand eight hundred and three, granted to this party interested, the lands which he solicits, without injury to third persons, and until, according to the number of workers he may have for its cultivation, there be measured to him those corresponding to him, it being well understood, he is not to claim damages or injuries in cases of, from fear of invasion, or other motives of the royal service, he be ordered to retire to the interior of the province, and that he is to take possession of the said land within the term of six months, calculated from this date.

WHITE.

Don Tomas de Aquilar, Ensign of Infantry, and Secretary of the Civil and Military Government of this City and Province by His Majesty.

I certify that the preceding copy is faithfully taken from the original which exists in the secretary's office under my charge; and in virtue of what is ordered in the superior decree which precedes, I give the present in St. Augustine, of Florida, the third of September, one thousand eight hundred and eighteen.

(Signed) TOMAS DE AQUILAR.

I certify the forgoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,
Int. and Tr. Sup. Court E. D. F.

Certificate and Plat of Survey.

No. 8.

Being the annexed certificate and plat of survey for 15,000 acres of land, and marked exhibit E, offered and read in evidence on the part of the claimant; subject to objections of United States attorney.

Don George Clarke, Captain of the Northern District of East Florida, and Surveyor General of said Province, by commission from his Government.

I certify that in consequence of the superior decree, dated the fifth of September, of the year one thousand eight hundred and three, which has been presented to me by Don Daniel O'Hara, I have surveyed and bounded to him fifteen thousand acres of land on the heads of the river Nassau, called Alligator's Swamp and Mill's Swamp, which were granted to him by the government on the day aforesaid; which land is conformable, in all its circumstances, with the following

plat and its copy, which I preserve in the book of surveys in my charge.

St. Marys, of Florida, 4th of March, 1819.

JORGE I. F. CLARKE.

[For plat see original, page 87.]

Permit to O'Hara to bring in a Brig.

No. 9.

Marked exhibit F, offered and read in evidence by claimant; subject to objections of United States attorney.

Don Enrique White, Colonel of the Royal Armies, Civil and Military Governor of this Province, &c.

I grant permission to the new settler, Don Daniel O'Hara, that in virtue of the royal order of the ninth of June, 1793, he may introduce into this port a brig from the United States, and to convey on board of her his property. Presenting this document, signed by my hand, and sealed with my arms at the general custom house, countersigned by the secretary of the government.

St. Augustine of Florida, 3d of September, 1803.

(Signed) ENRIQUE WHITE.

(Signed) JUAN DE PIERRA.

[SEAL.]

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,
Int. and Tr. Sup. Court E. D. F.

Petition for order of Survey.

No. 10.

Offered and read by United States.

TRANSLATION.

HIS EXCELLENCY THE GOVERNOR:

Don Daniel O'Hara, a subject of His Catholic Majesty, residing in this province, with due respect states to your excellency, That for

the purposes and effects which may be convenient to him, he wants the surveyor general, Don George Clarke, when the functions of his ministry will allow him, *to* proceed to the survey and delineation of fifteen thousand acres of land, which this government granted to him on the fifth of September, 1803, on the river Nassau, as appears by documents duly annexed. In virtue of which your petitioner supplicates your excellency to be pleased to grant him your superior permission in the usual form for the said survey, and this favor he hopes to receive from the justice of your excellency.

St. Augustine of Florida, 20th April, 1819.

DANIEL O'HARA.

Order of Governor.

DECREE.

ST. AUGUSTINE, 21st April, 1819.

Not admitted.

COPPINGER.

ST. AUGUSTINE, 17th October, 1832.

I certify that the preceding is a correct translation of the Spanish document annexed.

A. GAY, *Translator and Interpreter Of the Superior Court.*

No. 11.

Being the testimony of Antonio Alvarez, taken in this case, and with the documents thereto annexed, read in evidence on the part of the United States at the hearing thereof.

Commission to examine Alvarez.

TERRITORY OF FLORIDA.

In the name and by the authority of the United States of America—To John C. Cleland, Esq., a justice of the peace for St. Johns county.

Whereas a certain claim to land is now depending in the superior court for the eastern district of Florida, in which said claim Oliver O'Hara and others are claimants, and the United States of America defendant; and it being necessary to the investigation of said claim to have the testimony of Antonio Alvarez, the said John C. Cleland having been named by the said claimant and the said defendant as commissioner to examine said witness on certain interrogatories.

Know ye, that, confiding in your prudence, ability, and integrity, you are by these presents appointed, and full power and authority are hereby given to you, diligently to examine the aforesaid witness upon certain interrogatories to be exhibited to you, as well on the part of the said claimants as on the part of the said defendant, or of either party in said cause; and therefore you are hereby authorized and requested, on a certain day, or on certain days, and at a certain place, or at certain places, to be appointed by you for that purpose, to cause the said witness to come before you, and then and there to examine each of them apart, on said interrogatories, on his corporal oath, or on his solemn affirmation, first taken before you, and to take such his examination and reduce it to writing, on paper, and when you shall have so taken it, to sign the same with your name, and enclose and seal the whole together, conformably to the instructions hereunto subjoined.

Are you are hereby further requested that, before you act in, or be present at, the swearing or solemn affirming, and the examining of the said witnesses, you do make solemn oath that, according to the best of your knowledge, you will truly, faithfully, and without partiality to any or either of the parties in said cause, take the examination and deposition of the witness produced and sworn by virtue of this commission upon the interrogatories hereunto annexed and produced to you; and that you will not publish or make known to any person whomsoever, except the clerk or clerks who may by you be employed and sworn to secresy in the execution of this commission, the contents of any of the depositions of the witnesses to be taken by you in this commission named, until publication shall pass by rule or order of the said superior court.

And you are hereby further authorized and requested also to administer an oath or solemn affirmation of secresy to any clerk or clerks whom you may employ to take or transcribe the deposition of the witness so examined by virtue of these presents, before such clerk or clerks shall be permitted to act in, or be present at, such examination.

Witness the Honorable Robert R. Reid, judge of the superior court for the eastern district of Florida, this 14th day of August, in the year one thousand eight hundred and thirty-four.

[SEAL.] K. B. GIBBS, *Clerk.*

INSTRUCTIONS.

When the testimony is taken the commissioner is required to sign his name at the bottom of each sheet of the deposition, and of the whole, and after fixing and sealing the several sheets together, then to enclose the whole, examination, commission, and all, in an envelope, sealed up, and his name written on the outside, across the seal, and to endorse the packet on the corner thereof with the names of the parties, and to direct the same to K. B. Gibbs, C. S. C. E. D. F., at St. Augustine, and deliver it to him.

Interrogatories to Alvarez.

DISTRICT OF EAST FLORIDA, *Superior Court.*

THE UNITED STATES *ads.* OLIVER O'HARA. } Land claim 15,000 acres.

Interrogatories to be propounded to Antonio Alvarez, Esq., keeper of the public archives of East Florida, on behalf of the United States, before John C. Cleland, Esq., a justice of the peace:

First. Are there any royal titles on file in your office which were given by any governors of East Florida, conveying the title to lands to the grantee or grantees on account of services rendered by such grantee or grantees, during the insurrection which took place in said province in the years 1812 and 1813, or at any other time, or not?

Second. If you answer the preceding direct interrogatory in the affirmative, please to examine such royal titles particularly, and state the time when the first of such royal titles was made, and annex a copy thereof to your answer to this interrogatory?

Third. Please to examine your office, and ascertain to whom the largest quantity of land was confirmed by a royal title in said province previous to the year 1816? State to whom said royal title was made, and annex a copy thereof to your answer to this interrogatory.

Fourth. Please to state the quantity of land embraced in a Spanish caballaria, as known or generally understood in said province before the transfer thereof to the United States.

Fifth. Was it generally considered and understood to be thirty-three and one-third acres, or not?

THOS. DOUGLAS,
United States Attorney, &c.

I have no questions to ask; the point don't touch my cases. I shall object to them all at the trial, as having no bearing on the cases named.

C. DOWNING, *P. A.*

Answers of Alvarez.

SUPERIOR COURT, *District of East Florida, St. Johns county.*

THE UNITED STATES *ads.* OLIVER O'HARA. } Land claim, 15,000 acres.

The answers to the interrogataries propounded to Antonio Alvarez, Esquire, keeper of the public archives of East Florida, a witness examined in the above cause: the said Antonio Alvarez, being first duly sworn, to the

First interrogatory, witness answers, There are now on file in my office original royal [real] titles, given as a reward for services rendered the Spanish government of East Florida, during the insurrection in the years 1812 and 1813, and afterwards. I believe there is no specific title made as a payment for losses sustained.

Second interrogatory. Witness answers. The date or the first original royal [real] title in my office for services is the 20th December, 1815, and a copy of said title is hereunto annexed.

Third interrogatory. Witness answers. The largest quantity of land confirmed by a royal [real] title previous to the year 1816, was to John McQueen, a copy of which is hereunto annexed.

Fourth interrogatory. Witness answers. Thirty-three and one-third acres.

Fifth interrogatory. Witness answers. Yes.

ANTONIO ALVAREZ.

Sworn to and subscribed before me this 15th day of August, A. D. 1834.

JOHN C. CLELAND,
Justice of Peace and Commissioner.

Documents annexed to said answers.

Documents annexed to said deposition.

Title of property of one hundred acres of land in favor of Jose and Miguel Andrew.

Don Juan Jose de Estrada, lieutenant colonel of the royal armies, sergeant major of the city of Havana, civil and military governor and chief of the royal exchequer, pro. tem., of this city of St. Augustine of Florida, and its province: Whereas, in royal order of the twenty-ninth of March, of the present year, His Majesty has been pleased to approve the concessions and rewards proposed by my predecessor the brigadier Don Sabastian Kindelan for the officers and soldiers of the regular army, as well as of the militia of this province, who aided with their good services to the defence of it in time of rebellion, one of those favors being the distribution of lands in proportion to the number of family that each individual might have: That Jose and Miguel Andrew, artillery men of the company of militia of this city, having presented themselves, soliciting jointly one hundred acres of land, fifty for each one, at the place called the Chimneys, known as Governor Grant, bounding on the north by lands of Lazaro Ortega, on the south by vacant lands, on the east by Guana creek, and on the west by north river, there were granted to them by my decree of the thirteenth instant, had in conformity with what I was advised on the subject by his lordship my Auditor of War, as appears by the proceedings which exist in the escribano's office. Therefore I have thought proper to grant, as in the name of His Majesty I do grant to the afore-

said Jose and Miguel Andrew, the one hundred acres of land aforesaid, without injury to third persons, for themselves, their heirs and successors, in absolute property, and in issuing to them, as by these presents I do, the corresponding title by which I separate the royal exchequer from the right and dominion which to said lands it had, and I cede and transfer it to the aforenamed Josè and Miguel Andrew, their heirs and successors, that in consequence thereof they may possess it as their own, use and enjoy it free of all incumbrance, with all its inlets, outlets, uses, customs, rights and services, which it had, has, and of right and in law thereto appertain and of might belong, and it being their will they may sell, cede, transfer, and alienate it, as may best suit them. To all of which I interpose my authority as far as I can, and of right ought to, in virtue of the will of the sovereign.

Given under my hand, and countersigned by the undersigned escribano pro. tem., of the government and royal exchequer of this city of St. Augustine of Florida, the twentieth of December, one thousand eight hundred and fifteen.

(Signed,) JUAN JOSE DE ESTRADA.

By order of his excellency, Juan de Entralgo, escribano pro. tem. of the government and royal exchequer.

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,
Trans. and Inter. Sup. Court E. D. F.

Title in favor of Don Juan McQueen, of ninety-eight caballarias and eight acres of land, at the plantation called San Juan Nepomuceno.

Don Enrique White, colonel of the royal armies, civil and military governor of the city of St. Augustine of Florida and its province, by His Majesty: Whereas, in royal order communicated to this government on the twentieth of October, one thousand seven hundred and ninety, by the captain general of the Island of Cuba and two Floridas, it is provided, among other things, that to those strangers, who, of their own accord, should present themselves to swear vassalage to our sovereign, there should be granted and surveyed lands gratis, in proportion to the workers that each family might have. That Don Juan McQueen, captain of militia and commander of them upon the rivers St. Johns and St. Marys, having presented himself, and taken the customary oath, he solicited of the government, and there were granted, surveyed, and delivered to him among other lands, ninety-eight caballarias and eight acres of land at the plantation called San Juan Nepomuceno, as a part of those corresponding to him, which land is known and distinguished under the following dimensions and lines: the first line runs south twenty-two degrees west, beginning at a pine marked with a cross, on the margin of the river St. Johns, and ends at a stake with the same mark, bounding on the lands of

Don Thomas Sterling, containing in measurement one hundred and forty chains: the second line runs west, begins at said stake, and ends at a pine with the same mark, having in measurement one hundred and fifty-five chains: the third runs north, beginning at said pine, and ends at another with the same mark of a cross; its measurement is of one hundred and sixty chains: the fourth runs west, commencing at said pine, and ending at another with the same mark, containing in its measurement one hundred and ten chains: the fifth runs north, beginning at the pine referred to, and ends at a stake with the same mark; its measurement is of one hundred and ten chains: the sixth runs to the east, beginning at the aforesaid stake, and ends at a pine with the same mark, containing in measurement eighty chains: the seventh runs north fifty degrees east, beginning at the pine referred to, and ends at a cypress marked with the same mark of a cross, it has in measurement forty chains: its front runs partly on the river St. Johns and partly on McGirt's creek, forming an irregular figure divided by various creeks, as appears from the certificate given by the captain Don Pedro Manot, commissioned judge for said distribution and measurement of lands, dated the fourteenth of January, one thousand seven hundred and ninety-two, and its corresponding plat executed by Don Samuel Eastlake, who was surveyor at said measurement. And whereas there had been no title whatever issued to him for proof and security of his dominion to the said land, in the form that it was executed to others: that there has already elapsed more than the ten years of uninterrupted possession, to obtain the useful and direct dominion of the aforesaid lands, in absolute property, having built houses upon and cultivated them, and finally complying with all the other conditions which the government established for the grants and concessions of this nature, apparent in the title issued to other settlers, as is stated in the proceedings moved by the interested, soliciting to have issued to him the corresponding titles to the lands which he has already measured and bounded, and of which he is in possession. Therefore and in consideration of all of which, having been previously advised by his lordship my lieutenant, auditor of war and assessor general, I have thought proper to grant him, as in the name of His Majesty and his royal justice which I administer, I do grant to the aforesaid Don Juan McQueen, the aforesaid ninety-eight caballarias and eight acres of land, of which the said plantation is composed, for himself, his heirs, and successors, in absolute property, and in issuing to him as by these presents I do, the corresponding title, by which I separate the royal exchequer from the right which to said land it had, and I cede and transfer it to the aforesaid McQueen, his heirs, and successors, that in consequence thereof they may possess it as their own, use and enjoy it free of all incumbrance, with all its inlets, outlets, uses, customs, rights and services, which it had, has, and of right and in law thereto appertained and might belong, and it being their will they may sell, cede, exchange, transfer and alienate them as may best suit them, in virtue of the royal

order already cited. To all of which I interpose my authority as far as I can and of right ought to.

Given under my hand, and countersigned by the undersigned escribano of His Majesty and of the government and royal exchequer, in this city of St. Augustine of Florida, the twenty-seventh of February, one thousand eight hundred and four, interlined, to the aforesaid Don Juan McQueen. Valid.

(Signed,) ENRIQUE WHITE.

By order of his excellency,

(Signed,) JOSE DE ZUBIZANETA,
Escribano of the Government.

I certify the foregoing to be a true and correct translation of the Spanish document annexed.

JOS. S. SANCHEZ,
Int. and Tr. Sup. Court, E. D. F.

No. 12.

Being the testimony of Antonio Alvarez, as taken under commission duly issued in the case of John Breward vs. The United States, and offered and read in evidence in this cause on the part of the United States, the same being so copied as to be made applicable hereto, to wit:

Deposition of Antonio Alvarez in case of Breward.

SUPERIOR COURT, *District of East Florida, St. Johns county.*

THE UNITED STATES *ads.* OLIVER O'HARA und others. } Land claim, 15,000 acres.

Interrogatories to be propounded to Antonio Alvarez, Esq., a witness to be sworn and examined on the part of the United States before Elias B. Gould and John C. Cleland, Esquires.

First. Are you a native of East Florida, or not?

Second. What is your age?

Third. How long have you resided in the city of St. Augustine, in East Florida?

Fourth. Did you hold any office in East Florida before the transfer of that province to the United States? If you did, please to state what office, and when, and how long you discharged the duties of such office?

Fifth. Did you at any time act as clerk in the governor's secretary office, or in the office of the escribano, or not? If you did, please to state which, when, and how long?

Sixth. In what office were concessions of land made and kept in East Florida, before the transfer of that province to the United States?

Seventh. In what office were royal titles [real titles] made and kept in East Florida, before the transfer of that province to the United States?

Eighth. In what office should the papers now be found deposited which are referred to in the 6th and 7th preceding interrogatories? Is or is not the public archives the proper place of deposit for such papers?

Ninth. Are you the keeper of the public archives of E. Florida or not? If you are, please to state how long you have held said office.

Tenth. Please to name the several persons who held and exercised the office of governor of the Province of East Florida, between the years 1784 and 1821, and the time when each of said persons entered upon the discharge of his duties as such governor, and when they respectively ceased to discharge the said duties.

Eleventh. Is there any order on file in the said archives, under your charge, from the King of Spain, or from the council of the Indies, requiring said governor to render an account of his administration during the time when he held and discharged the duties of said office, as governor as aforesaid? If there is, please to state to which of said governors said order was directed, and annex to your answer a copy thereof.

Twelfth. Were any of said governors ever required to render such account? If yea, state which of them.

Thirteenth. Did any one of said governors ever render such an account? If they did, please to state which of them, when it was made, and *particularly* whether such account contained a statement of the number of grants or concessions of land made by said governor, during such administration, with the name [or names] of each grantee, [or grantees,] and the number of acres of land granted to each.

Fourteenth. Is there any copy of such an account made by any of said governors now on file in the archives under your charge? If there is, please annex a copy thereof to your answer.

Fifteenth. Did any of said governors ever undergo a residencia in said province? If yea, which of them, and when?

Sixteenth. Did any of said governors ever render any account to the king, captain general, Intendant of Cuba, or any other officer of the lands granted by him, except the single case of the exchange of lands for a vessel with Juan Russel, or not? If they did, please to state which of them, and of what said account consisted; and state also the particulars of the case of Juan Russel.

THOS. DOUGLAS,
U. States Atty.

SUPERIOR COURT, *District of East Florida.*

THE UNITED STATES *ads.* OLIVER O'HARA and others. } Land claim, 15,000 acres.

The answers of Antonio Alvarez to the Interrogatories hereunto annexed, taken before the commissioners appointed for that purpose, taken in behalf of the United States:

To the first interrogatory, witness answers, I am a native of East Florida.

Second. To this he answers, my age is forty-two years.

Third. To this he answers, St. Augustine has always been my residence. I was absent for some time in 1809 and 1810, in the Havana.

Fourth. To this he answers, I was clerk in the government secretary's office from 1807 to the change of government, during which time I was absent in the year 1809 and part of 1810, and parts of 1814 and 1815.

Fifth. To this he answers, I was clerk in the government secretary's office, as stated in the preceding answer. I also acted as clerk in the office of the escribano for a few months in the year 1814.

Sixth. To this he answers, concessions of land were made and kept in the office of the secretary of the government.

Seventh. To this he answers, royal or real titles were made and kept in the office of the escribano.

Eighth. To this he answers, the proper place of deposit for such papers is the office of the public archives.

Ninth. To this he answers, I am the keeper of the public archives, and I have held the office since 1829.

Tenth. To this he answers, Zespedes, from 1784 to 1790; Quesada, from 1790 to 1796; White, from 1796 to 1811; Estrada, from 1811 to June, 1812; Kindelain, from 1812, I believe, to May, 1815; Estrada, the balance of 1815; and Coppinger, from 1816 to the change of flags. My knowledge of the time of the government of Zespedes and Quesada is derived from the information I obtained in the office of the secretary of the government.

Eleventh. To this he answers, I know of no such order.

Twelfth. To this he answers, I know of none.

Thirteenth. To this he answers, none of the governors made such account.

Fourteenth. To this he answers, there is no such document on file in my office.

Fifteenth. To this he answers, I know of no governor of East Florida who underwent any such residencia.

Sixteenth. To this he answers, the governors of East Florida never rendered an account of the lands granted by them, except in

the case of the exchange of four thousand acres of land for a schooner with Juan Russell.

ANTONIO ALVAREZ.

TERRITORY OF FLORIDA, *County of St. Johns.*

We, whose names are hereunto subscribed, commissioners named in the annexed commission, do certify that, after being sworn ourselves, we did examine the witness named in said commission, under oath; and his answers to the interrogatories annexed to said commission are truly and correctly herein set forth. Given under our hands, at St. Augustine, the 6th August, 1834.

JOHN C. CLELAND,
E. B. GOULD,
Commissioners.

Document in Russel's Case.

No. 13.

Offered and read by the U. States.

TRANSLATION.

Under date of the 14th of June last, His Excellency the Minister of the Royal Domain tells me what follows:

"I have given to the King an account of your excellency's letter, No. 9, of the 20th of November last, in which you inform of what was directed to you by the Governor of East Florida, on the occasion of his having given to Don Juan Russell one thousand acres of land, in exchange for a schooner which he wanted for the royal service, and which, with all its appurtenances, was valued two thousand six hundred dollars. His majesty, being informed of the whole transaction, has been pleased to approve, for this time only, the said determination, in consideration of the absolute want of funds in the said province, and commands me to charge you again, as I do charge you, to comply with the provisions of the royal orders of the 14th of November, 1804, and of the 31st March, 1806, which prohibit the alienation of the royal lands which was made in favor of foreigners, and which provisions ought to be complied with rigirously in future. This, by order of his majesty, I communicate to your excellency, for your knowledge and government."

And I communicate the same to your excellency, for the corresponding effects on your part. God preserve your excellency many years. Habana, 4th March, 1815.

APODACA.

His Excellency the GOV. OF EAST FLORIDA.

ST. AUGUSTINE, 21st November, 1829.

I certify that the preceding is a correct translation of the Spanish document annexed.

A. GAY, *Translator and Int'r of the Sup'or Court.*

Deposition of Anto. Alvarez, in case of Lowe and others.

No. 14.

Being the Testimony of Antonio Alvarez, as taken under commission, duly issued, in the case of John M. Lowe and others, vs. the United States, and offered and read in evidence in this case, on the part of the United States, the same being so copied as to be made applicable thereto, to wit:

DISTRICT OF EAST FLORIDA, *Superior Court.*

THE UNITED STATES, *ads.* OLIVER O'HARA and others.

Interrogatories to be propounded to Antonio Alvarez, Esquire, Keeper of the Public Archives of East Florida, a witness to be sworn and examined before John C. Cleland, Esq., a Justice of the Peace.

First. Are there any [royal order or] royal orders from the King of Spain, or any order, or orders, from the council of the Indies, the Captain General or Intendant of the Island of Cuba, providing for the granting of lands in East Florida, on file in your office, except the royal orders of the 29th October, 1790, and the royal order of July 7th, 1815, or not? If there are, please to name them, and annex a copy thereof to your answer.

Second. Are the royal orders dated Havana, October 15th, 1790, and published in Clarke's Land Laws, page 996, and the one dated Havana, July 7th, 1815, and published in same book, page 1010, the same that you have first mentioned above, or not? Please to state particularly whether all the grants or concessions of land in East Florida, made since 1790, were made under either one or the other of these two last mentioned royal orders, or not. If not, under what royal order were they made?

Third. Was it the duty and practice of the governors of East Florida to file, in the office of the escribano of that province, [or in some other office, and which,] all the orders which they respectively receive from the King of Spain, or from any of their superior officers, relative to the granting of lands in said province, or not?

Fourth. Were you acquainted with the laws and usages of the government of East Florida before the transfer of that Province to the United States, or not?

Fifth. When the Governor of East Florida referred any matter of judicial enquiry in relation to lands in which the King of Spain might have an interest to the auditor of war for his report, and said auditor reported thereon, and the governor made a decree approving such report, and requiring it to be complied with, was or was not the said decree, according to the laws and usages aforesaid, conclusive as to all the matters and things contained in said report?

Sixth. Was or was not such decree held and considered by the tribunals of the province aforesaid as of the highest judicial authority, and conclusive upon all the matters embraced by such report, unless the same was reversed by the king, or by the said governor himself, upon a review thereof?

THOS. DOUGLAS,
United States Attorney, &c.

First cross-interrogatory. If, in answer, to the third interrogatory, you undertake to say what was the *duty* and *practice* of the governors of East Florida, as to the matters enquired of in the interrogatory, be pleased to state how you acquired a knowledge of the duty of these governors, and how you know what was their *practice* as to *all* the orders which they respectively received as to the granting of lands.

Second cross-interrogatory. If you undertake to give an opinion upon the law questions propounded to you in the fifth and sixth interrogatories, state your means of knowledge, and upon what principles your opinion is founded.

C. DOWNING,
for claimants.

SUPERIOR COURT, *Eastern District of Florida, St. Johns County.*

THE UNITED STATES *ads.* OLIVER O'HARA and others. } Land claim, 15,000 acres.

The Answers to the Interrogatories propounded to Antonio Alvarez, Keeper of the Public Archives of East Florida, a witness examined in the above cause, the said Antonio Alvarez being first duly sworn, taken in behalf of the United States:

To the first interrogatory. Witness answers, there are none to my knowledge.

Second interrogatory. Witness answers, I have never read Clarke's Land Laws. I believe that all the grants of land made in East Florida since 1790 are founded upon the royal order communicated to this government on the 29th October, 1790, and the royal order of the 29th March, 1815.

Third interrogatory. Witness answers, it was the practice to file in the secretary's office all official communications received by the governors, and it was considered their duty to do so.

Fourth interrogatory. Witness answers, I am not acquainted with the laws, but I am of some of the usages.

Fifth interrogatory. Witness answers, as far as I know, all the decrees of the governors of East Florida relating to lands, with or without the report or advice of the auditor of war, were here considered conclusive, except when the governors themselves referred the same to a higher authority—but I cannot say any thing with respect to the law on this subject.

Sixth interrogatory. Witness answers to this interrogatory, I answer the same as in the preceding one.

Cross Interrogatories.

First cross interrogatory. Witness answers, while I was a clerk in the government secretary's office, it was the practice to file all the official communications handed by the governors to the secretary—but Ido not know whether the governors retained or not in their possession any official communications. It was considered the duty of the governors to hand them to the secretary, but I know of no law respecting this subject.

Second cross interrogatory. Witness answers, I have stated, and now repeat, that I know about the law on this subject.

ANTONIO ALVAREZ.

Sworn to, and subscribed before me, this 14th day of August, A. D. 1834.

JOHN C. CLELAND,
Justice of the Peace and Commissioner.

And afterwards, at the same term of July, in the year of our Lord one thousand eight hundred and thirty-four, to wit, on Saturday, the forty-second day of said term, and the twenty-ninth day of the month of November, the following entry of record was made in this cause, to wit:

Cause continued for further Proof.

OLIVER O'HARA and others
vs.
THE UNITED STATES OF AMERICA. } Land claim, 15,000 acres.

This cause having been heard and submitted to the court, and the court having examined the same, doth order that this cause be continued, with leave to the parties to introduce further proof therein.

And afterwards, before the superior court for the district of East Florida, holden at the court house in the city of St. Augustine, at the

term of July, in the year of our Lord one thousand eight hundred and thirty-five, to wit, on Tuesday, the eleventh day of said term, and the twenty-eighth day of said month, the following entry of record was made in this cause, to wit:

Cause continued.

OLIVER O'HARA and others
vs.
THE UNITED STATES OF AMERICA. } Land claim, 15,000 acres.

This day came as well the counsel for the said claimants as the counsel for the said United States, and, on motion of the claimants' counsel, the counsel for the United States not resisting said motion, it is ordered that this cause be continued till the next term, and that the said claimant be ruled to a trial in this case at the next term of this court.

And afterwards, to wit, on the eighteenth day of July, in the year of our Lord one thousand eight hundred and thirty-seven, the said claimant filed the following agreement, to wit:

Agreement of Counsel.

OLIVER O'HARA
vs.
THE UNITED STATES.

This case, submitted by consent, with leave to argue the same by briefs, and permission to either party to take testimony, and file the same in the cause at any time prior to the first of May next.

THOS. DOUGLAS, *U. S. Att'y.*
W. H. BROCKENBROUGH.

Tuesday, July 18th, 1837.

And afterwards, before the superior court for the district of East Florida, holden at the court house in the city of St. Augustine, at the term of July, in the year of our Lord one thousand eight hundred and thirty-seven, to wit, on Tuesday, the third day of said term, and the eighteenth day of said month, the following entry of record was made in this cause, to wit:

Cause again submitted.

OLIVER O'HARA
vs.
THE UNITED STATES OF AMERICA. } Land claim, 15,000 acres.

This day came as well the counsel for the said claimant as the

Third interrogatory. Witness answers, it was the practice to file in the secretary's office all official communications received by the governors, and it was considered their duty to do so.

Fourth interrogatory. Witness answers, I am not acquainted with the laws, but I am of some of the usages.

Fifth interrogatory. Witness answers, as far as I know, all the decrees of the governors of East Florida relating to lands, with or without the report or advice of the auditor of war, were here considered conclusive, except when the governors themselves referred the same to a higher authority—but I cannot say any thing with respect to the law on this subject.

Sixth interrogatory. Witness answers to this interrogatory, I answer the same as in the preceding one.

Cross Interrogatories.

First cross interrogatory. Witness answers, while I was a clerk in the government secretary's office, it was the practice to file all the official communications handed by the governors to the secretary—but Ido not know whether the governors retained or not in their possession any official communications. It was considered the duty of the governors to hand them to the secretary, but I know of no law respecting this subject.

Second cross interrogatory. Witness answers, I have stated, and now repeat, that I know about the law on this subject.

ANTONIO ALVAREZ.

Sworn to, and subscribed before me, this 14th day of August, A. D. 1834.

JOHN C. CLELAND,
Justice of the Peace and Commissioner.

And afterwards, at the same term of July, in the year of our Lord one thousand eight hundred and thirty-four, to wit, on Saturday, the forty-second day of said term, and the twenty-ninth day of the month of November, the following entry of record was made in this cause, to wit:

Cause continued for further Proof.

OLIVER O'HARA and others
vs.
THE UNITED STATES OF AMERICA. } Land claim, 15,000 acres.

This cause having been heard and submitted to the court, and the court having examined the same, doth order that this cause be continued, with leave to the parties to introduce further proof therein.

And afterwards, before the superior court for the district of East Florida, holden at the court house in the city of St. Augustine, at the

term of July, in the year of our Lord one thousand eight hundred and thirty-five, to wit, on Tuesday, the eleventh day of said term, and the twenty-eighth day of said month, the following entry of record was made in this cause, to wit:

Cause continued.

OLIVER O'HARA and others
vs.
THE UNITED STATES OF AMERICA. } Land claim, 15,000 acres.

This day came as well the counsel for the said claimants as the counsel for the said United States, and, on motion of the claimants' counsel, the counsel for the United States not resisting said motion, it is ordered that this cause be continued till the next term, and that the said claimant be ruled to a trial in this case at the next term of this court.

And afterwards, to wit, on the eighteenth day of July, in the year of our Lord one thousand eight hundred and thirty-seven, the said claimant filed the following agreement, to wit:

Agreement of Counsel.

OLIVER O'HARA
vs.
THE UNITED STATES.

This case, submitted by consent, with leave to argue the same by briefs, and permission to either party to take testimony, and file the same in the cause at any time prior to the first of May next.

THOS. DOUGLAS, *U. S. Att'y.*
W. H. BROCKENBROUGH.

Tuesday, July 18th, 1837.

And afterwards, before the superior court for the district of East Florida, holden at the court house in the city of St. Augustine, at the term of July, in the year of our Lord one thousand eight hundred and thirty-seven, to wit, on Tuesday, the third day of said term, and the eighteenth day of said month, the following entry of record was made in this cause, to wit:

Cause again submitted.

OLIVER O'HARA
vs.
THE UNITED STATES OF AMERICA. } Land claim, 15,000 acres.

This day came as well the counsel for the said claimant as the

counsel for the United States, and under the agreement of counsel filed herein, this claim was submitted to the court for its decree thereon, with leave to introduce evidence and testimony, and to argue by briefs up to the first day of May next.

And afterwards, before the superior court for the district of East Florida, holden at the court house in the city of St. Augustine, at the term of July, in the year of our Lord one thousand eight hundred and thirty-eight, to wit, on Wednesday, the eleventh day of said term, and the nineteenth day of the month of September, the following entry of record was made in this cause, to wit:

Hearing postponed.

OLIVER O'HARA and others
vs.
THE UNITED STATES. } Land claim, 15,000 acres.

This day came the attorney of the United States for this district, and the counsel for the claimants being absent from the district and Territory, it is ordered that the hearing of this cause be postponed till the term of this court be holden on the second Monday of October next.

And afterwards, at the same term of July, in the year of our Lord one thousand eight hundred and thirty-eight, to wit, on Friday, the seventeenth day of said term, and the twelfth day of the month of October, the following entry of record was made in this cause, to wit:

Cause finally submitted.

OLIVER O'HARA
vs.
THE UNITED STATES OF AMERICA. } Land claim, 15,000 acres.

This day came the attorney of the United States for this district; and this claim was submitted to the court on the evidence and testimony filed and offered herein.

And afterwards, at the same term of July, in the year of our Lord one thousand eight hundred and thirty-eight, to wit, on Thursday, the twenty-second day of said term, and the eighth day of the month of November, the following entry of record was made in this cause, to wit:

Decree of the Court.

OLIVER O'HARA and others
against.
THE UNITED STATES OF AMERICA. } Land claim, 15,000 acres.

Whereas Oliver O'Hara did, in pursuance of the act of Congress of the United States, entitled "An act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida," and approved 23d day of May, 1828, on the fourth day of May, 1829, file his petition for the confirmation of certain land therein mentioned, in the clerk's office of the superior court for the eastern district of Florida. And whereas the attorney of the United States for said district did duly appear and file his answer to the said petition, and this cause having been heard, and evidence and argument of counsel as well on the part of the said claimant as on that of the United States having been offered and submitted to the court; and the court having examined the claim of the said petitioners, and the answer of the attorney of the United States, together with the evidence and testimony filed in this cause, and having maturely considered the same, doth order, adjudge, and decree, that this claim is not valid, and that, in accordance with the laws and customs of Spain, and under and by virtue of the late "Treaty of amity, settlement, and limits between the United States of America and the King of Spain," ratified by the President of the United States on the 22d February, 1821; and under and by virtue of the laws of nations and of the United States, it is hereby ordered and decreed, that this claim be rejected.

And afterwards, to wit, on the seventeenth day of December, in the year of our Lord one thousand eight hundred and thirty-eight, the said claimants, by their solicitors, brought and filed in the clerk's office aforesaid, their appeal from the foregoing decree; which appeal is in the words and figures following, to wit:

Appeal.

OLIVER O'HARA and others
vs.
THE UNITED STATES. } Land claim, 15,000 acres. Rejected July term, 1838.

The claimants in the above entitled cause hereby appeal from the decree of the superior court for East Florida in the above named cause, to the Supreme Court of the United States.

C. DOWNING,
Solicitor for Claimants.

Dated St. Augustine, December 17th, 1838.

SUPERIOR COURT, *District of East Florida.*

I, Kingsley B. Gibbs, clerk of the said court for the district afore-